

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
PATRICIA GONZALEZ and JENNIFER GONZALEZ,
individually and as co-administrators of
the Estate of KENNY LAZO,

Plaintiffs,

- against -

COUNTY OF SUFFOLK, SUFFOLK POLICE DEPARTMENT,
POLICE COMMISSIONER RICHARD DORMER, in his
individual and official capacity, POLICE
OFFICER JOHN NEWTON, in his individual and
official capacity, POLICE OFFICER JAMES
SCIMONE, in his individual and official
capacity, POLICE OFFICER WILLIAM JUDGE, in his
individual and official capacity, POLICE
OFFICER CHRISTOPHER TALT, in his individual
and official capacity, POLICE OFFICER LINK, in
his individual and official capacity, COUNTY
OF SUFFOLK OFFICE OF DISTRICT ATTORNEY,
SUFFOLK COUNTY DISTRICT ATTORNEY THOMAS SPOTA,
in his individual and official capacity, ASST.
DISTRICT ATTORNEY JOHN B. COLLINS, in his
individual and official capacity, and "JOHN
AND JANE DOES 1-10" representing as yet
unknown and unidentified members of the Office
of the Suffolk County District Attorney (all
in their individual and official capacities as
employees of the Office of Suffolk County
District Attorney),

Defendants.
-----x

October 12, 2011
10:22 a.m.

(Continued.)

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100 Veterans Memorial Highway
Hauppauge, New York

October 12, 2011
10:22 a.m.

Deposition of the Defendant, JOHN
B. COLLINS, ESQ., pursuant to Notice, taken
before Florence Syskrot, a Notary Public of
the State of New York.

IT IS HEREBY STIPULATED AND

AGREED by and between the attorneys
for the respective parties herein,
that the filing, sealing and
certification of the within deposition
be waived.

IT IS FURTHER STIPULATED AND

AGREED that all objections, except
as to the form of the question,
shall be reserved to the time of the
trial.

IT IS FURTHER STIPULATED AND

AGREED that the within deposition
may be sworn to and signed before
any officer authorized to administer an
oath with the same force and effect as
if signed and sworn to before the
Court.

- oOo -

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JOHN B. COLLINS, ESQ., having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. BREWINGTON:

Q. Please state your name.

A. John B. Collins.

Q. What is your present address?

A. Suffolk County District Attorney's Office, 200 Center Drive South, Riverhead, New York 11901.

Q. Good morning.

A. Good morning.

Q. Mr. Collins, my name is Fred Brewington. We have had a chance to meet each other before.

A. Yes, we have.

Q. I'm going to be asking you some questions concerning the matter which is currently pending in the Eastern District of New York relating to Kenny Lazo.

You understand that you are a defendant in that case?

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Collins

anything, let me know that. We will be happy to accommodate you for any of your needs.

If you need to speak to your attorney who is seated to your left, let me know that as well. We will take a break for that.

The only request that I have is that if there is a question pending, if at all possible, we try and get an answer, a question and answer on the record. All right?

A. Thank you.

Q. Thank you. Now, sir, are you currently employed?

A. I am.

Q. By whom are you employed?

A. Suffolk County.

Q. In what capacity, please?

A. I am the Chief Trial Prosecutor for the Suffolk County District Attorney's Office.

Q. How long have you held that particular position?

A. Approximately five years.

Q. Sir, how long have you been

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Collins

A. I do.

Q. Sir, I am going to be asking you questions relative to your knowledge, and any information that you may have that is relevant to the case, as well as other information that may be relevant to the underlying litigation.

If at any time you don't understand the question, let me know that. I will be happy to rephrase the question so that you do understand it.

If you don't hear the question, for some reason my voice drops down, or we get something that happens that obliterates my voice, let me know that. I will be happy to try and have the question rephrased, or I will restate it, or I will ask our court reporter, who is writing down everything, to repeat the question. All right?

A. Yes, sir.

Q. Just as you did respond verbally to that inquiry, I'll ask that you respond verbally to each of the inquiries that I'm about to make.

If there is a need for a break or

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Collins

employed by the Suffolk County District Attorney's Office?

A. Slightly more than thirty years.

Q. Sir, just tell us, what is your highest level of education?

A. I graduated law school.

Q. Which law school did you graduate from?

A. Fordham University School of Law in 1981.

Q. Where did you do your undergraduate work, please?

A. Boston College School of Arts and Sciences. I graduated in 1977 Magna Cum Laude.

Q. That is a good accomplishment. That is wonderful for you.

A. Thank you.

Q. Thank you. Sir, can you tell us, other than working in the District Attorney's Office, did you have any other employment prior to 1981?

A. Yes, I did.

Q. Was there any other employment?

Collins

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A. Yes.

Q. Where did you work, please?

A. I worked at the Delmonico Hotel on 59th Street and Park Avenue during law school. I worked the desk and the door there.

Q. After law school any other employment other than the District Attorney's Office?

A. No, sir.

Q. Sir, I will ask you: Could you please tell us, currently what are your job responsibilities?

A. My current responsibilities include oversight of the Homicide, Major Crime, Child Abuse and Domestic Violence, Case Advisory, East End and District Court bureaus and their day-to-day operations.

I also have administrative duties as the Chief Trial Prosecutor, along with two other Division Chiefs in the office, as well as with the Chief Assistant.

The hierarchy in the office is the District Attorney, the Chief Assistant, and then three equal Division Chiefs.

Collins

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Q. I am sorry to interrupt you.

If you can give me your best estimate, I would appreciate that.

A. I would venture to guess approximately one hundred.

Q. That would be approximately a hundred lawyers?

A. Yes.

Q. Now, with regard to any other employees in those bureaus, do you have any oversight or supervisory responsibility, that being for persons that are not attorneys?

A. Yes. There are investigators and support staff as well as attorneys.

Q. What oversight responsibilities do you have for let's say investigators?

A. Technically the Bureau Chief of the actual bureaus have direct responsibility. And I have more oversight.

I don't have much direct contact with the investigators, except for perhaps specific cases that I am directly involved in.

Q. With regard to the case relating to Kenneth Lazo, did you have any oversight or

Collins

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Q. Of which you are one?

A. Yes, sir.

Q. What is your level of responsibility in terms of making decisions within the office, that being decisions that are either binding to the office or otherwise?

A. Well, I have oversight over the aforementioned bureaus. So I am involved in decisions that are made by those Bureau Chiefs and the subordinates.

I also have some input with regard to hiring and other policy decisions in the office.

Q. With regard to the actual number of persons that are under your decision making end or supervision, what is the approximate number? Can you approximate?

A. Well, we have I think 185 lawyers total in the office. I could try and do a rough count, if you would like.

I don't have a number of those that I am --

Q. If you could, please.

A. -- directly responsible for.

Collins

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direct contact with investigators?

A. Not from the District Attorney's Office. Only from the Police Department.

Q. What was that contact?

A. I had contact with Detective Patrick Portela, who was the lead detective assigned by the Homicide Squad of the Police Department. And I believe his Supervisor 1, Sgt. Edward Pandrey.

Q. Can you describe what your interaction was with both of those gentlemen as part of the Kenny Lazo case?

A. There came a point in the Lazo case that I took over the investigation. At that point in time I met with the aforementioned sergeant and the detective.

They disclosed the results of their investigation to me at that time. I may have given them an assignment or two to follow up upon.

And then I had several meetings with Detective Portela thereafter pursuant to the Grand Jury investigation.

Q. When you say assignments, what

Collins

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are you referring to?

A. I may have asked the detective to help me contact witnesses.

I did return to the scene with the detective. I believe we took some additional photographs when we were at the scene of the event.

He accompanied me in interviewing some expert witnesses as well as witnesses to the events of that night.

Q. Just so that I'm clear, when you refer to "the scene of the event," are you talking about on the highway, or in the precinct, or both?

A. Both.

Q. The decision to actually go to those places, was that your decision?

A. I think it was a mutual decision. But I certainly participated in making that decision. I wanted to go to both places.

Q. With regard to Sgt. Fandrey, what interaction did you have with him relative to this case?

A. I believe I only met with the

Collins

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their understanding of the events of the night of April the 12th and those events that lead to Mr. Lazo's death, the interviews that they had conducted to that point, their contact with the Medical Examiner, and a summary of the radio calls between the involved officers that particular evening, meaning the 12th of April.

Q. Did they disclose, if you recall, to you that there had been communications between the officers other than radio calls?

A. I am not sure that they disclosed that at that time.

But I think upon my review of the radio calls I vaguely recall there having been some reference to telephone contact between the involved police officers.

But I can't say for sure that either the detective or the sergeant referenced those that day.

Q. With regard to whenever it was you did learn of the telephone conversations, did you have any inquiry made as to what the content of those telephone conversations were,

Collins

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sergeant the one time. And that would have been at around the time of the preliminary meeting I had with Detective Portela where they first disclosed the results of their investigation.

I don't believe I had subsequent contact with the sergeant prior to or during the Grand Jury.

Q. When or about when was it that you had this initial meeting that you can recall?

A. My best estimation is around the end of July of '08.

Q. Where did that meeting take place?

A. In my office in Riverhead in the same room in which you and I met.

Q. Right. The conference room that kind of winds its way in the back?

A. Yes, sir.

Q. When you met with Detective Portela and Sgt. Fandrey, what was it that they disclosed to you?

A. They basically laid out to me

Collins

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either you directly or someone on your behalf?

A. I believe that Detective Portela did that on my behalf. And I may have asked the quote unquote non-target officers who may have been on the other end of that conversation what was the content.

Q. When you say you may have, in other words, you may have spoken to them directly about that?

A. The non-target police personnel, yes, meaning such as Christopher Talt or -- I think -- my recollection is he might be the only one that had telephone contact with the involved police officers.

I did not speak with any of the potential targeted police officers until they were in the Grand Jury.

Q. With regard to any of the officers being target or non target, were there any statements taken from them, other than their initial written statements that you are aware of?

A. No, not by me, not that I'm aware of.

Collins

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Q. With regard to Officer Talt, did you take any further statement from him either in writing, or audio, or video?

A. No.

I believe it is Detective Talt.

Q. I am sorry. You may be right.

With regard to any of the officers, that being whether or not they were target or not, were any of them interviewed by anyone from your office or from the Police Department, other than their written statements?

A. I'm sorry. Your question confused me.

Q. That is all right. I will try and rephrase it.

Other than --

MR. BREWINGTON: Withdrawn.

Q. When you spoke to Detective Talt, did you take any notes of your conversation?

A. I did not. And I spoke to him on more than one occasion.

Q. Was that in person or by telephone, do you recall?

Collins

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A. Both. I would ask questions. I would attempt to direct his attention to my areas of interest.

And sometimes he would answer those questions most directly. Sometimes he would answer them in a narrative, attempting to give me a -- what is the word I'm looking for -- sort of a timeline to the events that night.

Q. Chronology?

A. Chronology. Thank you, sir.

A chronology of the events that night.

Q. With regard to the chronology or the sequence of events that he was trying to provide you when he did, did you find anything in contradiction to either what he had said before or any of the other information that had been provided to you by the other officers in their written statements?

A. Not that I recall.

Q. Now, did you actually present this matter to the Grand Jury?

A. I did.

Collins

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A. The only conversation I may have had with him over the telephone would have been scheduling. Anything substantive was in person.

Q. Each time that you met, was that in your office?

A. Yes, I believe so.

Q. You indicated it was more than once. Do you recall approximately how many times it was?

A. Per -- somewhere between three, or four tops.

Q. I understand that is an approximation.

A. Yes.

Q. During your conversations with Detective Talt, what subjects were discussed?

A. The events of April the 12th regarding Mr. Lazo.

Q. With regard to those events, were you questioning him, was he providing information to you?

What was the process by which the discussions went forward?

Collins

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Q. When you presented this to the Grand Jury -- you referenced target officers. Who were the target officers?

A. The officers who were involved in the physical altercation and confrontation with Mr. Lazo.

That would be Detective Newton. I believe his first name was John. Sgt. Scimone. I don't recall his first name. And Police Officer Judge. I think his first name was William.

Q. Did each of those individuals have attorneys?

A. They did.

Q. At any time prior to the Grand Jury, were any of those officers provided an opportunity to give a further statement to the District Attorney's Office?

A. No.

Q. Were any of those individuals presented with an option to come in and give a further statement?

A. Could you rephrase that, please?

Q. Surely. At any time prior to the

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presentation in the Grand Jury, were any of those officers, either directly or through their attorneys, contacted and advised that if they would like to come in to give a further statement to their written statements, that that was available to them?

A. No, sir, that did not happen.

Q. Do you recall who the attorneys were representing the individuals, the individual officers?

A. Not specifically. Because I literally met each one of them about two minutes before they went into the Grand Jury.

One young fella was relatively familiar. He had dark hair. And I think his name was Chris.

The other attorneys, I don't think I had any prior dealings with, and literally shook their hand and met them on the way into the Grand Jury.

(Phone ringing.) Excuse me for one second.

MR. BREWINGTON: Let's take a break.

Collins

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have got some letters and things. So that may be helpful. I understand that is right now, your general memory. We'll see if we can make it more specific as we go forward.

A. It was originally assigned to someone else in my office. And I took it over from them.

Q. Who was it originally assigned to?

A. ADA Merrifield took the initial call from Homicide, I believe, on the late evening or early morning hours of the 13th.

Q. What is the ADA's full name?

A. Denise Merrifield. She was assigned to the Homicide Bureau of the District Attorney's Office at the time.

The following Monday, which I believe was the 14th, it was assigned to Bureau Chief Janet Albertson.

I ultimately took it over from Miss Albertson at a later date in the summer.

Q. How did that come about?

A. It came about as a result of the Medical Examiner's findings toward the end of

Collins

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(Recess taken.)

Q. Now, sir, with regard to the investigation leading up to the Grand Jury presentation -- this event I think took place on April 12, 2008.

When in relationship to that date was the case actually assigned to you or did you take it on?

MR. BREWINGTON: Withdrawn.

Q. Those may be two different things.

Let me ask the question this way: When for the first time did you take on this case?

A. I believe it was at the very beginning of --

No. I'm sorry. Withdrawn.

I believe it was towards the end of July.

Q. Of 2008?

A. Yes. But there are things that would refresh my recollection to be more specific.

Q. I'll try and do that. I think I

Collins

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June declaring Mr. Lazo's death a homicide, and also as a result of potential conflicts with Miss Albertson's trial schedule.

Q. What about it being declared a homicide by the Medical Examiner would have resulted or lead to you taking it over?

A. The fact that the Medical Examiner declared it a homicide, as opposed to an accidental or natural death, dictated the involvement of the District Attorney's Homicide Bureau in conjunction with the Police Department's Homicide Squad.

The Medical Examiner's finding that it was a homicide, a death at the hands of another, dictated that the case would ultimately be presented to a Grand Jury by the District Attorney's Homicide Bureau in conjunction with the Suffolk County Police Department's Homicide Squad.

And I believe that determination was made toward the end of June of '08. And I probably have a more specific date than that.

Q. As I said, we will get to documents that may be helpful to you.

Collins

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When the case was originally assigned to ADA Denise Merrifield, do you know what actions, if any, she took on the case?

A. I believe she was merely the recipient of a notification by the Homicide Squad that the event and the death had occurred.

Q. Was there any investigation undertaken at that time by the District Attorney's Office?

A. No. It is the province of the Suffolk County Police Department's Homicide Squad at that point, and it is their investigation.

Q. Then at some point you said it went to Janet Albertson?

A. That following Monday, the 14th, Janet was assigned to oversee or be the recipient of information for the District Attorney's Office from the Police Department.

Q. Do you know if she did have any contact with the Police Department?

A. I don't know specifically. I imagine she may have had some phone calls.

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by the Federal government early on.

I received a phone call within the first several days from F.B.I. Special Agent Johanna Esposito, who I understood to have been stationed in Suffolk County.

She indicated that she was monitoring, her word, the situation on behalf of the F.B.I. and in particular on behalf of an Assistant U.S. Attorney.

And she gave some indication that there could be or would be a concurrent or supplanting investigation by the Federal authorities.

Q. Did that call in any way prevent the District Attorney's Office from conducting its own investigation?

A. Prevent?

Q. Yes.

A. No.

Q. Was there a decision made not to conduct its own investigation as a result of that call?

A. As a result of that call it was yet early for us to have undertaken an

Collins

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Q. At that time, that being within the first two days to a week, were there --

MR. BREWINGTON: Withdrawn.

Q. At that time, within the first week, was there any ability by the District Attorney's Office to start its own investigation of this incident?

A. Ability?

Q. Ability is my first question.

A. Yes.

Q. With regard to both your experience and your knowledge in this situation, was there any authority to do so?

A. I believe so.

Q. With the death of Kenneth Lazo, is it always, as far as your experience is concerned, the process where a police officer is involved that there is some waiting period for the police to conduct an investigation rather than the DA's Office to conduct an investigation?

A. That was typical. However, there was one complicating factor here that was somewhat unusual is that there was involvement

Collins

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investigation because the death had not been determined by the Medical Examiner to be other than natural or accidental.

However, the involvement of the Federal authorities was a complicating factor in undertaking the usual investigation, even after the Medical Examiner had declared the death as a homicide.

And I believe the involvement of the Federal authorities was called for both by your predecessor, Mr. Chakmakian, as well as your office, both publicly and by letter.

Q. Let's take those one at a time. And I appreciate that, because we most certainly have documentation that supports that the Federal government was asked to come in and take a look at this.

Did the involvement, if indeed the F.B.I. or the U.S. Attorney's Office was involved for the purpose of I think you said monitoring the situation, was that preclusive of your office doing an investigation?

A. Not necessarily.

Q. You also said that there were

Collins

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1 complications.

2 Were there complications other
3 than those that you have just outlined?

4 A. No. And maybe complications is
5 too strong a word. It was an extra
6 circumstance.

7 Q. What about those extra
8 circumstances that lead to a determination, if
9 such a determination was made, for the
10 District Attorney's Office not to conduct its
11 own investigation?

12 A. There came a point before the end
13 of July with the possibility or the actuality
14 of a Federal investigation, that the District
15 Attorney sought some clarification from the
16 U.S. Attorney in charge as to whether they
17 were conducting an investigation or we were to
18 conduct our usual investigation.

19 Q. Were you a party in any way, that
20 being secondhand or directly, to that exchange
21 of information between the offices?

22 A. I do believe I may have had a
23 subsequent conversation with Agent Esposito in
24 the course of the case.
25

Collins

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1 A. Which determination?

2 Q. To stand down.

3 A. The District Attorney.

4 Q. Mr. Spoda?

5 A. Yes.

6 Q. Was that in consultation with
7 you?

8 A. He told me that. I don't think I
9 was necessarily consulted.

10 Q. Did you agree with that decision?

11 MR. DUNNE: Object to the form of
12 that question.

13 Go ahead and answer that the best
14 you can.

15 A. I had no problem with his
16 decision.

17 Q. At the time that that decision
18 was made, had you reviewed any documents or
19 statements, including any photographs,
20 relative to this matter?

21 A. I don't believe so.

22 If we are talking -- if we are
23 talking July, I may have seen the Medical
24 Examiner's autopsy report. But that would be
25

Collins

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1 I did not have any conversations
2 with the U.S. Attorney or any Assistant U.S.
3 Attorney. Mr. Spoda had those conversations.

4 Q. What were the conversations that
5 you did have with Agent Esposito, other than
6 the one that you indicated that she was
7 monitoring this situation on behalf of her
8 office?

9 A. I believe we spoke again sometime
10 in July. But I would need to refresh my
11 recollection.

12 Q. I wasn't asking the time. My
13 question was: What was the further content,
14 if there was any?

15 A. I am not clear on what the
16 further content was, other than the fact that
17 we were yet standing down, waiting for them to
18 do what they were going to do or not.

19 Q. Understanding that the term
20 "standing down" meaning backing off or not
21 talking any action at that particular time, is
22 that accurate?

23 A. Yes, sir.

24 Q. Who made that determination?
25

Collins

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1 it.

2 Q. At that time that the
3 determination was made to essentially stand
4 down, was the case assigned to you at that
5 point?

6 A. That would be fair to say.

7 Q. I thank you for allowing me to be
8 fair. Was it accurate?

9 A. I think that means the same
10 thing.

11 Q. I just want to be clear. In your
12 mind, that is what it means?

13 A. In my mind if it was after the
14 Medical Examiner's issuance of the autopsy
15 report, then I had it assigned to me by that
16 point.

17 Q. Sir, perhaps we can try and pin
18 down some dates. This may be helpful.

19 I'm going to show you what we
20 will mark today as Plaintiffs' Collins 1 for
21 identification.

22 It is a letter dated July 10,
23 2008.

24 MR. BREWINGTON: Please mark
25

Collins

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1 this.

2 (Plaintiffs' Collins Exhibit 1,
3 Letter dated July 10, 2008, marked for
4 identification.)

5 Q. (Handing.)

6 A. (Perusing.) I have seen number

7 1.

8 Q. Sir, do you recognize that
9 document?

10 A. I do.

11 Q. What is that, please?

12 A. That is a letter I wrote to you.

13 Q. This would be from your file
14 copy; is that correct, or from someone's file?

15 A. From someone's file.

16 I'm surprised that your copy
17 doesn't have my signature on it.

18 Q. It didn't come from my office.
19 It came from being produced by Mr. Dunne's
20 office.

21 A. Your copy should have my
22 signature on it.

23 Q. Right, which is actually just my
24 question. What is the normal process?
25

Collins

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1 Q. The second sentence of this
2 letter says, "Each agency is forwarding the
3 results of their investigation to the District
4 Attorney's Office for review and the
5 appropriate action."

6 Just to be clear, that was the
7 Police Department and the Medical Examiner as
8 the agencies that you were referring to?

9 A. Correct.

10 Q. Were there any other agencies
11 which were involved within the County of
12 Suffolk that were part of any investigation in
13 the death of Kenneth Lazo or Kenny Lazo?

14 A. Technically, no. But I believe
15 the Toxicology Department of the Medical
16 Examiner's Office was involved. And
17 technically they are under the aegis of the
18 Health Department, not the Medical Examiner.

19 But that would be the only
20 addition I would make. And it is probably
21 hyper technical.

22 Q. Okay. I appreciate your
23 specificity.

24 Let's put that one aside. We
25

Collins

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1 Is there a process by which some
2 of the copies are signed and some of them are
3 not signed?

4 A. I believe whatever I sent to you
5 would have been signed by me.

6 Q. With regard to this letter, what
7 prompted you to send this letter?

8 A. Our previous contact.

9 Q. Do you recall what that was?

10 A. Yes. There were multiple letters
11 exchanged between yourself and myself from as
12 early as the first week of the case.

13 Q. With regard to any of those
14 letters that lead up to this letter of July
15 10, 2008, from the time of whatever the first
16 letter was until this time, was there any
17 investigation done by the DA's Office up until
18 this time, July 10, 2008, that you recall?

19 A. Specifically, no. Perhaps with
20 the exception of providing the Police
21 Department with whatever subpoenas or the like
22 they may have needed to accomplish their
23 investigation. But I don't specifically
24 recall any.
25

Collins

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1 will start making a pile.

2 A. Over here good?

3 Q. That is a good place for it.
4 Let's just take a look at this
5 letter dated "July 15, 2008."

6 MR. BREWINGTON: We will identify
7 this as Collins 2 for identification.

8 (Plaintiffs' Collins Exhibit 2,
9 Letter dated July 15, 2008, marked for
10 identification.)

11 Q. (Handing.)

12 A. (Perusing.) Oh, I have seen
13 number 2.

14 Q. Have you seen that letter before?

15 A. Yes.

16 Q. Did you have any involvement or
17 any hand in drafting its content?

18 A. I don't believe so.

19 Q. Within the letter there is a
20 reference in the first paragraph, the second
21 sentence, being the third line, says
22 "Subsequent to his death a police department
23 investigation was conducted and the matter has
24 been turned over to my office for official
25

Collins

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review."

Is that an accurate statement, that it was turned over to the DA's Office for official review only after the Police Department investigation?

A. I believe so.

Q. So at that time, that being at the time of Kenny Lazo's death forward, up until I guess late June or early July, was there any "official review," using that term, by your office?

A. I am not quite sure what you mean by that.

Q. Well, I'm trying to understand what, you know -- in this situation, is there an actual turning over of the case by someone for your office's official review?

A. That would be the ordinary course in a case of this type, that the police would conduct their investigation and then make their findings known to us, as I think I related to you in the letter of the 10th.

Q. Is that just the normal course that is kind of followed within Suffolk

Collins

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investigation."

Now this is "July 15, 2008."

Looking at this, did you actually speak to Agent Esposito wherein there was an inquiry into the status of the District Attorney's investigation?

A. I think I referenced earlier a subsequent conversation I had with Agent Esposito. This appears to be it.

And Mr. Spoda obviously got some of the information in this letter from me.

Q. At that time, that being approximately July 15, 2008, was there a status of your investigation?

A. Yes.

Q. What was the status?

A. Under investigation.

Q. Had an investigation commenced?

MR. DUNNE: By whom?

MR. BREWINGTON: By the District Attorney's Office.

A. I don't specifically remember when I started listening to the radio tapes. So I might have started doing that subsequent

Collins

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County, or is that something which is set by rules, regulations or other requirements?

A. It is the normal course for the District Attorney's Office. Whether there are specific written rules in the Police Department's regulations, I'm not sure.

Q. The next line says, "A letter to this effect was sent to counsel for the deceased's family, Mr. Frederick K. Brewington, on July 10, 2008."

That is the letter that we just identified as Collins's 1, as far as you know?

A. It is.

Q. In the second paragraph it says, "Sometime shortly after the death of Mr. Lazo..." Excuse me. I'm so sorry.

A. Sure.

Q. In the second paragraph, "Sometime shortly after the death of Mr. Lazo, FBI Agent Johanna Esposito spoke to members of my office and the Suffolk County Police Department. Today, at the direction of AUSA Sarah Coyne, Agent Esposito contacted my office again to inquire into the status of our

Collins

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to the Medical Examiner's issuance of her autopsy report at the end of June. I don't specifically remember.

Had I met with witnesses, or the like, or any such thing at that point? No.

Q. At the end of the letter, it asks to "Please advise as to your contemplated course of action as soon as possible. In the interim my office will not take any further action on this matter until I hear from you."

Did you have any discussion about this particular letter, particularly that portion of the letter, when it was sent out with Mr. Spoda?

A. I believe I did.

Q. What was the discussion, if you can tell me, about taking no action at that particular time?

A. This is what I referred to earlier in my instructions from District Attorney to stand down until the Federal authorities decided whether they were going to investigate it or not.

Q. Did you receive any further

Collins

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contact from the Federal authorities indicating that they were not going to do an investigation?

A. I did not.

Q. Do you know if anyone did?

A. I believe the District Attorney did at a date subsequent to this letter, perhaps ten days, two weeks later.

Q. Do you know in what form that came? Was it a letter?

A. My recollection is it was a phone call only and was not memorialized in writing. But that is my recollection.

If you know differently, you can help me.

Q. I'm trying to --

A. My recollection is a phone call.

Q. Were you involved in that phone call at all?

A. I was not.

Q. Did anyone speak to you about a conversation, whether or not it was by phone or in person, about the U.S. Attorney's Office or the F.B.I. deciding not to investigate this

Collins

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Q. With regard to this particular case, once it was identified as a homicide, how was it that you identified who the targets, for lack of a better term, were going to be for the Grand Jury?

A. It came from discussing with Detective Portela his investigation, which I believe I did in less than a week's time from the District Attorney ordering me to move forward.

It also came from my personal review of the radio tapes made available to me regarding the time frame of this incident.

When I say radio tapes, I mean Police Department radio tapes.

Q. Well, did you have any concern with the Police Department undertaking the investigation knowing that other police were the targets?

A. Did I have a concern?

Q. Yes.

A. No.

Q. With regard to the investigation that was being done, was anyone from Internal

Collins

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case?

A. The District Attorney notified me that he had heard from someone on behalf of the U.S. Attorney that they were not going to pursue an investigation. And I was ordered to move forward.

Q. Who ordered you to move forward?

A. Mr. Spoda.

Q. Was that order verbally or in writing?

A. Verbally.

Q. Now, with regard to the moving forward, did the District Attorney's --

MR. BREWINGTON: Withdrawn.

Q. Within your bureau or in your office, did the District Attorney's Office have investigators working with you?

A. On this case?

Q. Yes.

A. No.

Q. Are there investigators within the District Attorney's Office that existed that could have worked with you on this case?

A. Had I requested assistance, yes.

Collins

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Affairs working with you?

A. With me, no.

Q. Was there an Internal Affairs' investigation going on at the same time?

A. I don't believe so. I don't know for a fact.

Q. Did you ever request or suggest to anyone that Internal Affairs review this as well as Homicide investigators?

A. My understanding of the Police Department protocol is that the Homicide Squad is charged with investigation of incidents such as this. And the Internal Affairs Bureau of the Police Department may follow up following the Homicide investigation. But they are not to do a concurrent investigation. That's my understanding of their protocol.

Q. Did you at any point consider the need for an Internal Affairs' investigation to take place while you were preparing yourself to present to the Grand Jury?

A. No. I believe I had one of the best investigators in the Police Department assigned to me in the person of Detective

Collins

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Portela. And I did not seek to supplement his help.

Q. So with regard to the assistance and work that you were having done by Detective Portela, did you at any time ask him to compare the statements that were given by each of the subject officers for similarities?

A. I don't recall making that specific request.

Q. Do you recall any specific requests that you made to him for him to make part of his investigation?

A. I asked him to tell me what the involved officers reported, if anything. And he did so.

Q. Did you read their reports?

A. I read whatever paperwork the detective had as part of his file. And that included the reports submitted by any of those involved.

Q. At any time did you learn or seek to learn if any of the officers had created their statements in conjunction with one another?

Collins

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Q. (Hanging.)

A. (Perusing.) I have seen number 3.

Q. So you have that document before you?

A. I do.

Q. Did you actually receive this document in or about the middle of October 2008?

A. I did.

Q. When you received it, had you begun --

MR. BREWINGTON: Withdrawn.

Q. When you received it, what level, if any, had your investigation gotten to, that being October 2008?

A. By that point I was in the process of going to the scene, both scenes, having additional photographs taken at my request, and meeting with various witnesses to the events, as well as experts who might have relevant information but were not witnesses to the events.

Q. Which experts did you meet with?

Collins

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A. I don't specifically recall asking that.

However, permitting that would be against Homicide's usual practice.

Q. That being permitting what?

A. Permitting them to do their statements or reports together.

Ordinarily those officers would be separated and asked to each write their own report. And that is my understanding.

Q. Do you know if any inquiry was made as to whether or not that did or did not occur?

A. Sitting here now three years plus later, I don't remember.

Q. Let me ask you to take a look at this letter that we will identify as Collins 3 for identification.

MR. BREWINGTON: It is a single-page letter dated "October 14, 2008."

(Plaintiffs' Collins Exhibit 3, Letter dated October 14, 2008, marked for identification.)

Collins

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A. I certainly met with the Medical Examiner at some point during this time.

I may have met with someone from the Toxicology Department of the Health Department.

And I met with an individual from Fire, Rescue and Emergency Services with regard to the workings and use of the defibrillator, with which I was not familiar.

Q. This letter references a meeting which took place with you on or about August 19, 2008. Do you recall that meeting?

A. I do.

Q. That took place in your office?

A. It did.

Q. With myself and I think Mr. Pincus was there, and you had someone else in the room. I don't recall who that was.

A. And so did you.

Q. Yes. I'm trying to think --

A. You had Miss Cartwright, if I recall.

Q. Miss Cartwright, yes.

A. I don't recall having anyone with

Collins

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me, frankly. If I did, I defer to you. But I don't recall.

Q. At that time, that being August 19th of 2008, during that meeting would it be accurate to say that there was no Grand Jury presentation done at that point?

A. Sure.

Q. Would it also be accurate to say that at the time of this letter, October 14, 2008, there was no Grand Jury presentation which had taken place yet?

A. That is true.

Q. At that time, August 14, 2008 --

A. Do you mean the 19th?

Q. Excuse me. October 14, 2008, the time of this letter -- at the time of this letter, October 14, 2008, what, if anything, was missing from your investigation?

A. I believe there were days subsequent to the 14th that I was yet meeting with witnesses.

Q. Do you recall what witnesses those were?

A. There were police officers who

Collins

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A. Many.

Q. Were any of the photographs that were used in the Grand Jury presentation used in conjunction with any of the officers that testified?

A. I imagine I showed photographs from the case to each of the people who testified in the Grand Jury.

MR. DUNNE: Can I just clarify?

Are you referring to strictly photographs of Mr. Lazo?

MR. BREWINGTON: Yes.

MR. DUNNE: Or are you also referring to scene photos?

MR. BREWINGTON: I'm referring to Mr. Lazo.

Q. If my question wasn't clear, let me rephrase it.

A. Sure. I'm sorry if I misunderstood it.

Q. No problem. Were any photographs of Mr. Lazo that were taken as part of any investigation shown to the police witnesses that were targets in this case?

Collins

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had rendered medical aid and were present in the precinct or were called to the precinct.

There was personnel that transported Mr. Lazo from the precinct to the hospital.

There were civilian witnesses who had made 911 calls from the highway at the time of the event.

And again, some of them I may have met just prior to this letter, some thereafter. But I don't believe the presentation began until October the 20th or thereabouts.

So in that prior week I was doing many of those things. On which side of this letter each of them were, I can't specifically recall. But it was all ongoing at this time.

Q. At the time, or in or about the time of this letter, had you seen photographs of Mr. Lazo that were part of any investigation?

A. Yes.

Q. Had any of those photographs been utilized in the Grand Jury presentation?

Collins

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A. I don't remember. It would have been only in the Grand Jury, so I don't specifically recall what I showed them or did not show them.

Q. Would that be your normal course when there are police targets, to show them photographs of the deceased?

MR. DUNNE: I'll object to the form.

Go ahead and answer that as best you can.

A. I don't know that there is a normal course. Each case is very different.

I just don't specifically remember if I did or did not in this case.

Q. Were those photographs available to you to show them?

A. Yes, most definitely.

Q. Now, in speaking to any of the police officers at the Grand Jury, do you recall asking them if they used flashlights to hit Mr. Lazo?

A. I don't know if I specifically asked them or they volunteered it. But it

Collins

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definitely -- that information came before the Grand Jury.

As you know, the potential target gets to testify in the narrative. It may well have been in their narrative. And there may well have been follow-up questions. But that information was certainly put before the Grand Jury.

Q. Were there any questions from you that were not at the direction of the Grand Jury members?

A. I am sure there were.

Q. Do you recall in total the number of times that were said by the officers to have hit Kenny Lazo with their flashlight?

A. I do not.

MR. BREWINGTON: Let's identify this next document. It is a document dated "October 17, 2008." It is a two-page document.

We saved a tree and copied it back and front. It is okay to label it on the front Collins 4 for identification.

Collins

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Q. -- knowing that Dr. Thanning might have information, did you have the ability to contact her, and interview her, and speak to her about speaking -- coming before the Grand Jury?

A. I had the opportunity.

Q. Did you take that opportunity?

A. I did not.

Q. Who chose not to do that?

A. Me, based on my conversation with you on the 19th.

Q. When you say you chose not to do that, in your presentation to the Grand Jury, was it your intent to provide the Grand Jury with as much information, relevant information that you could in turn for them to make their determination?

A. Yes.

Q. Who was it, if anyone, that controlled the Grand Jury presentation at the time that you were preparing and actually presenting?

MR. DUNNE: Object to the use of the word "controlled."

Collins

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(Plaintiffs' Collins Exhibit 4, Letter dated October 17, 2008, marked for identification.)

Q. (Handing.)

A. (Perusing.) I have seen number 4.

Q. Thank you, sir.

In this document, which appears to be signed by you -- is it?

A. That is my signature.

Q. In this document there is a reference to the meeting that took place on August 19, 2008.

In it you state at number "(1)" that "you did not desire that your forensic expert, Dr. Thanning, be called before the Grand Jury." Then it says "(2)" that you had no other relevant witnesses that you request be called before the Grand Jury.

Now, with regard to Dr. Thanning, when you say that I did not desire to have Dr. Thanning called, just taking that statement as it is on the page --

A. Um hum.

Collins

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MR. BREWINGTON: Sure.

MR. DUNNE: I think the witness understands the intended meaning.

MR. BREWINGTON: Withdrawn.

Q. Who was it that oversaw the presentation of what evidence would go into the Grand Jury at the time that you were preparing and actually presenting?

A. Technically the District Attorney. But I think he had yielded that authority to me.

Q. So you were actually calling the shots on that one; is that correct?

A. So to speak.

Q. When you say "so to speak," is that not accurate?

A. I don't know that I would use the terminology "calling the shots." But, yes, I called the witnesses.

Q. And chose which witnesses to call and which ones not to call?

A. I chose which witnesses to call.

Q. Did you also choose which witnesses not to call?

Collins

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A. I'm not aware of any witnesses I didn't call.

MR. BREWINGTON: Let's identify this letter as Collins 5 for identification. It is a letter dated "November 3, 2008."

(Plaintiffs' Collins Exhibit 5, Letter dated November 3, 2008, marked for identification.)

Q. (Handing.)

A. (Perusing.) I have seen number 5.

Q. So with regard to number 5, did you actually receive this letter?

A. I did.

Q. In the body of the letter, there is a reference to a "Press Release," that being in the second sentence starting in the third line. Do you see that?

A. I see the words "Press Release" four lines down.

Q. Was there a press release issued by your office following the Grand Jury presentation?

Collins

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made false statements about there being a "civil lawsuit" and that we "declined" to "offer..." --

A. "Declined an offer."

Q. -- "declined an offer from the district attorney's office to include the family's privately hired forensic expert or any other relevant witnesses..."

Now, when you say declined an offer to include the privately hired forensic expert, do you recall if indeed the declination that you claim that happened here again prevented you from having anyone testify in the Grand Jury?

A. Well, first of all, it was the press release that quote is taken from, not me.

Q. Did you make that statement?

A. Did I make that statement?

Q. Yes, sir.

A. I did not make that statement, no.

Q. Do you know where that statement came from, where its origins came from?

Collins

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A. There might have been. I don't specifically remember.

But your letter seems to imply that there was, so I take that on faith.

Q. Do you know if there was actually --

MR. BREWINGTON: Withdrawn.

Q. Did anyone speak to you about putting together or creating a press release following the Grand Jury presentation?

A. I vaguely recall Mr. Clifford and perhaps the District Attorney talking to me about that.

Q. Mr. Clifford being?

A. Mr. Clifford is a civilian employee of the DA's Office. He is quote unquote our press person.

Q. In the body of the letter there is a reference where it is actually quoting a statement.

It says -- I'll read the whole sentence. "Shortly after receipt of your letter and copy of the "Finding of Dismissal" we obtained a copy of your Press Release which

Collins

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A. The information may have come from me in a discussion with the District Attorney and Mr. Clifford.

Q. With regard to that information, did you review any statements or press release that were made by your office attributing statements to the office or to yourself?

A. I'm sorry. Say it again.

Q. Sure. Did you review any press release that was released by your office which attributed any statements to yourself or anyone else in your office?

A. I believe I reviewed a press release regarding this case prior to its issuance.

Q. With regard to that press release, did you seek to change, alter or amend any aspect of the press release?

A. Whatever went out was in accord with my recollections.

Q. Prior to the presentation to the Grand Jury, did you receive a letter from our office dated October 17, 2008?

MR. DUNNE: Would that be number

Collins

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4?

MR. BREWINGTON: No. That is his letter.

MR. DUNNE: I'm sorry. Wrong letter.

A. I believe I have the letters here with me. I would have to look at them.

Q. Do you want to take a look real quickly?

A. Sure.

MR. BREWINGTON: I will give the witness the opportunity to look in his file.

A. You are referring to a letter from you to me on the 17th?

Q. Yes.

A. I did receive a letter dated October 17th from you which followed your number 4 for this examination.

Q. Which is a letter from you?

A. Correct.

MR. BREWINGTON: Mr. Dunne, can I just see that document?

MR. DUNNE: Sure. Let me make

Collins

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It is over there (indicating.)

A. Do you need it?

Q. No. It is just for you to refer to.

A. Got it.

Q. In that letter it refers to your number "(1)" in the second paragraph, that being part of the second sentence -- excuse me -- the second paragraph on October 17th in my letter.

A. I have the reference.

Q. In that letter in response to that, this letter indicates that "It is your office that should be prosecuting this death case in the same fashion and with the same zeal that you approach others."

Is that a comment with which you disagree?

A. No.

Q. Then it goes on to read "The fact that Dr. Thanning was hired by the family does not place any obligation on them to supply or dictate what witnesses will or will not be presented to the Grand Jury."

Collins

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some copies.

Let's take a break.

(Recess taken.)

MR. BREWINGTON: Mark this as Plaintiffs' 6.

(Plaintiff's Exhibit 6, Letter dated October 17, 2008, marked for identification.)

Q. This letter, which I thank you for supplying out of your file, dated "October 17, 2008," did you actually receive a copy of this letter?

A. I did receive this letter.

Q. Was this prior to, that being October 17th or the day that you received it, prior to your Grand Jury presentation?

A. I'm not positive I received it on the 17th. But certainly it was prior.

Q. In that letter it references the letter that we previously marked --

MR. DUNNE: As 4.

Q. -- as Collins 4.

Can you pull that out for me, please?

Collins

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Is that an inaccurate statement?

A. It is not.

Q. Then it goes on to state "We ask that you and your office make the independent decision as to who and what needs to be presented and we will attempt to provide what support we can."

Was that statement in that letter unclear to you at that time?

A. Not in the least.

Q. With regard to the determination not -- or the determination not to call Dr. Thanning, who made that decision?

A. I did.

Q. When you made that decision, did you make it with the understanding that it was your decision to make one way or the other?

A. I knew that.

Q. With regard to the press release that is referenced in Collins 5, that being this letter (indicating) which is there --

A. Can I put 4 back?

Q. You can put it back.

A. I have got 5.

Collins

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Q. With regard to 5, the reference to us declining an offer, that being my office declining "an offer from the district attorney's office to include the family's privately hired forensic expert," is that accurate?

A. 100 percent.

Q. Sir, when you say it is "100 percent," in my letter of October 17th to you, is that what that is saying?

A. I don't know what it is saying.

Q. Well, to you is that declining to --

A. Based on my conversation --

Q. Let me finish my question, please.

A. I'm sorry. Sure.

Q. Sure.

A. I'm sorry. (Phone ringing.)

Q. Do you need to take it?

A. No, I'm not.

Q. Based on my letter of October 17th, is that declining "an offer from the district attorney's office to include the

Collins

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Q. Okay. Now, sir --

A. I also spoke to Dr. Milewski about her assessment of Dr. Thanning, and her previous work, and her previous experience with her.

Dr. Milewski was less than positive in her review of Dr. Thanning's acumen.

Q. After the discussion that you indicate happened in our meeting and then your discussion with the Medical Examiner of Suffolk County, you did receive my letter of October 17, 2008 as we just discussed, correct?

A. I still received it.

Q. At that time the words that are in this letter, even though your statements, you know, as to what you believe happened in the August meeting, if there was any question, did this clarify my position?

A. Your position did not need clarification.

Q. With regard to you deciding from an independent determination who would and who

Collins

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family's private hired forensic expert?"

A. Yes, it is.

Q. How does my letter of October 17, 2008 indicate to you that we declined an offer from your office to include the family's privately hired forensic expert?

A. Because on the 19th of August when we met in my office, I discussed with you the findings of the Suffolk County Medical Examiner in addition to providing you on that day with an addendum to her previously issued report.

When you and I discussed that autopsy finding, or those autopsy findings, you indicated to me that you were good with them and that my medical examiner, your words, had done a fine job.

I then asked you, knowing that you had had Dr. Thanning review the work of Dr. Milewski, offered you the opportunity to have Dr. Thanning come and testify before the Grand Jury nonetheless.

You told me at that point that that was not necessary.

Collins

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would not be called as a witness, you made that determination even after having received this letter of October 17, 2008?

A. No doubt.

Q. Would it be accurate to say, sir, that in this letter of October 17, 2008 there was also a request for additional information so that we could see if there were other relevant witnesses?

A. (Perusing.) Actually, it is not a request. It is a statement of fact.

Q. With regard to that statement of fact -- and I agree it is a fact. With regard to that statement of fact, that is in the last sentence of the second paragraph, which reads "Finally, we know that you should have records of all the persons in the Precinct on the night of the death of Mr. Lazo and since we have not been provided with any of that information -- "

A. (Phone ringing.) I am sorry. I am with you.

Q. "-- information and have not been able to interview those persons, we cannot

Collins

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affirm that there are "no other relevant witnesses that [we] request be called before the Grand Jury."

Now, with regard to that statement of fact, was that declining, as you saw it, to provide other witnesses?

A. My request of you with regard to witnesses other than Dr. Thanning had to do with any witnesses that perhaps I was unaware of, not police personnel who were on-site for whom I had records.

(Phone ringing.) I'm sorry. Can I take this quickly?

Q. Sure. Let's take a short break.

(Recess taken.)

A. I apologize.

Q. No problem.

With regard to your letter of October 17th, which is Collins 4, the one that is upside down.

A. Got it.

Q. In that letter, number "(2)" says "that you had no other relevant witnesses that you request be called before the Grand Jury."

Collins

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A. I don't think so. I don't recall if we talked over the phone after this or not.

May I just look at my correspondence file?

Q. Sure, please do.

MR. BREWINGTON: The witness is looking at his records.

A. I did not respond in writing.

THE WITNESS: This is my copy.

MR. DUNNE: It might be an extra one.

THE WITNESS: I think it came out of here. It is mine.

MR. DUNNE: Good.

Q. At that time, that being October 17, 2008, was the issue of whether or not the U.S. Attorney's Office would investigate this matter or the F.B.I., whether or not they were going to investigate this matter, still a question for you?

A. Only to the extent that you kept requesting their intervention.

Q. After my request for their intervention, did you make any further contact

Collins

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That doesn't reference -- am I looking at the right document?

A. Yes. I have the same one.

Q. That doesn't reference police --

MR. BREWINGTON: Withdrawn.

Q. -- other than police witnesses, does it?

A. Specifically no.

Q. Then it also says "If that position has changed, please notify me immediately, prior to Tuesday October 21, 2008."

What position were you referring to?

A. Both number (1) and number (2).

Q. Did my letter of October 17th sent "by certified mail return receipt requested and by fax" provide you with any change or clarification of my position?

A. None.

Q. With regard to Collins 6, which is my letter of October 17, 2008, was there any response that you provided and/or had provided to this letter?

Collins

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or attempt to make any contact with that office indicating that that request was being made?

A. I never made contact with the Federal authorities at any time.

Any contact I had with them was initiated by them.

Q. At any point did you attempt to or ask anyone on your behalf to -- on your behalf to attempt to contact them to ask them to take over this investigation or to assist in this investigation?

A. I didn't think you needed any assistance in that regard.

Q. I said you.

A. No, I did not. I didn't think you needed any assistance in requesting their assistance.

Q. That wasn't my question.

A. Say it again then.

MR. BREWINGTON: Can we have it read back, please.

(Record read.)

A. I stand by my answer.

Collins

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Q. Which is what?

A. I never contacted the Federal authorities regarding this investigation. And you continued to request their investigation through to today.

Q. Okay.

MR. BREWINGTON: Mark that. I move to strike that portion which is unresponsive.

Q. Did you at any time on behalf of the District Attorney's Office of Suffolk County request that the U.S. Attorney's Office or the F.B.I. to take on this investigation?

A. Not ever.

Q. Now, sir, you indicated that you did receive the autopsy report issued by the Suffolk County Medical Examiner's Office; is that correct?

A. I did.

MR. BREWINGTON: Let's mark this, please, as Collins 7 for identification.

It is a multi-page document, again copied back and front to save a tree.

Collins

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Anatomic Diagnoses," which are listed on the front of this document were presented to the Grand Jury?

A. They were. However, I don't recall if this specific document was introduced. It may have been only through the testimony of the Medical Examiner herself. I don't recall whether this was entered as an exhibit.

Q. Sir, in your normal course when there is a death homicide presentation to the Grand Jury, is it your normal practice to have the autopsy report marked as an exhibit?

A. Actually, it is our normal course to present only a letter from the Medical Examiner summarizing the autopsy, short of the complete report, pursuant to Article 190 of the Criminal Procedure Law.

Sometimes the full autopsy report is not ready by the time the case is presented to the Grand Jury and the Medical Examiner issues a letter in its stead pursuant to Article 190.

However, in this instance, the

Collins

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It was previously marked as Scimone 7 on January 5, 2011.

(Plaintiffs' Collins Exhibit 7, Report of Autopsy, marked for identification.)

Q. (Handing.)

A. (Perusing.) I have seen number 7.

Q. Do you recognize what this document is?

A. I do.

Q. What is it, please?

A. It is the "Report Of Autopsy" issued by the Suffolk County Medical Examiner's Office with reference to the death of "Kenny J. Lazo."

Q. With regard to this document, did you have this in your possession prior to your presentation to the Grand Jury?

A. Yes.

Q. Was a copy of this document presented to the Grand Jury?

A. I don't recall.

Q. Do you recall if the "Final

Collins

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Medical Examiner who performed the autopsy testified in person herself, which is why I can't recall whether any of those aforementioned documents were actually entered into evidence.

Q. When an autopsy report such as this is available at the time of a Grand Jury presentation, is it in your normal practice to have the report itself marked as an exhibit and entered before the Grand Jury?

A. In lieu of the aforementioned letter, yes.

Q. Sir, did you keep a listing of what exhibits were marked and which exhibits were not marked as the part of the Grand Jury presentation?

A. The Secretary of the Grand Jury kept a record of what items were entered into evidence in the course of the proceeding. And that record is part of the file I turned over to Mr. Dunne.

Q. Sir, have you reviewed that file?

A. No.

Q. Sir, did you actually keep the

Collins 77

1
2 Grand Jury exhibits?
3 A. That would have been my normal
4 practice.
5 Q. Based on this presentation that
6 you made to the Grand Jury, as you sit here
7 today you don't recall whether or not there
8 was the autopsy itself being marked as an
9 exhibit; is that correct?
10 A. That's correct.
11 Q. Now, with regard to the
12 references to the anatomic diagnoses that are
13 listed on this front page --
14 A. Yes.
15 Q. -- do you recall asking any
16 specific questions about the "Cardiac death
17 following exertion associated with prolonged
18 physical altercation with multiple blunt
19 impacts," asking questions about that to the
20 Medical Examiner?
21 A. Yes.
22 Q. Do you recall what it was that
23 you inquired about?
24 A. Not specifically.
25 Q. Do you recall what blunt impacts

Collins 78

1
2 were discussed by the Medical Examiner?
3 A. Specifically, no. But I do
4 recall that Mr. Lazo had various areas of
5 bruising about his body, in particular about
6 his head and face. And those injuries were
7 definitely discussed.
8 Q. When those were discussed, were
9 photographs of those injuries utilized during
10 the testimony of the Medical Examiner?
11 A. Yes.
12 Q. Do you recall as you sit here now
13 which photographs were actually utilized?
14 A. I do not.
15 Q. Going to the second page, this is
16 referenced as a "Homicide."
17 When you first received a copy of
18 this report, did you have any discussion with
19 the Medical Examiner about her findings?
20 A. I believe I did.
21 When I first received it? I am
22 sorry.
23 Q. Yes, sir.
24 A. When I first received it or
25 shortly thereafter.

Collins 79

1
2 Q. Or learned of its existence?
3 A. We talked about it.
4 Q. When you spoke to her about it,
5 did you talk about the fact that there had
6 been a finding that the manner of death was
7 homicide?
8 A. I did.
9 Q. What was the conversation that
10 you had with her, what did she say, what did
11 you say, as best you can recall?
12 A. Her general feeling with regard
13 to that finding was, since Mr. Lazo's death
14 resulted as a result of interaction with these
15 other police officers, that she was left with
16 no conclusion other than to call it a homicide
17 because it involved the interaction of others.
18 Q. Did she describe --
19 A. Excuse me -- along with her other
20 concomitant findings.
21 Q. Did she describe for you in your
22 discussion with her the type of injuries that
23 he suffered with regard to any blunt impacts?
24 A. I'm sure we did on several
25 occasions.

Collins 80

1
2 Q. At any time did you sit with her
3 before the Grand Jury to review any
4 photographs?
5 A. Yes.
6 Q. When or about when did that
7 occur?
8 A. Sometime between the end of July
9 and the end of October, on more than one
10 occasion.
11 MR. BREWINGTON: Let us mark this
12 please, as --
13 We are going to come back to
14 that, Richie, so leave that out
15 (indicating).
16 Let us mark this as Collins 8 for
17 identification. It is a single-page
18 photograph that was previously marked on
19 May 19, 2011.
20 (Plaintiffs' Exhibit 8, Copy of
21 photo, marked for identification.)
22 Q. (Hanging.) Sir, do you have that
23 document before you?
24 A. (Perusing.) I do.
25 Q. Do you recognize who is depicted

Collins

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1 in that photograph?

2 A. I believe it to be Mr. Lazo.

3 The photograph looks familiar to
4 me.

5 Q. During any of your conversations
6 with --

7 What's the doctor name?

8 A. Milewski.

9 Q. -- Milewski concerning Mr. Lazo,
10 did you ask specific questions about the
11 instrumentality of any of the injuries based
12 on her opinion that appear in this picture?

13 A. We definitely discussed
14 instrumentalities and any injuries that she
15 could attribute to in particular a flashlight,
16 or hands, or feet. Yes.

17 Q. Was she able to attribute any
18 injuries to a flashlight, or hands, or feet?

19 A. I don't specifically recall if
20 she was able to tell me which
21 instrumentalities may have caused which blunt
22 impact injuries.

23 Q. Did you ask her, either in your
24 interviews prior to the Grand Jury or in the
25

Collins

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1 A. I don't recall if I used one of
2 the flashlights that belonged to one of the
3 involved officers or if I used a similar
4 demonstrative type flashlight. I don't
5 specifically remember.

6 MR. BREWINGTON: Let's take
7 another look at what we will mark as
8 Collins 9 for identification.

9 These are a series of four
10 photographs that were taken in or about
11 April 15th of 2008. We will mark these
12 as Collins 9.

13 (Plaintiffs' Collins Exhibit 9,
14 Photocopy of four photos, marked for
15 identification.)

16 Q. I will ask you to look at Collins
17 9 for identification.

18 I'll represent to you that these
19 were photographs taken on or about April 15,
20 2008 by Dr. Thanning (handing).

21 A. (Perusing.) Um hum.

22 Q. Were photos similar to these
23 presented to the Grand Jury, if you recall?

24 A. Yes. With perhaps the exception
25

Collins

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1 Grand Jury, for her to make that assessment?

2 A. I did ask her to do that to the
3 best of her ability.

4 Q. In both situations, that being in
5 your initial interviews with her as well as in
6 the Grand Jury?

7 A. I don't know that I specifically
8 asked her that in the Grand Jury. That would
9 depend on what her answer was when we talked
10 about the case. And I don't specifically
11 recall if she was able to pinpoint specific
12 instrumentalities to specific injuries.

13 Q. Sir, with regard to flashlights
14 in this case, were any flashlights utilized as
15 Grand Jury exhibits?

16 A. Yes.

17 Q. How many, if you recall?

18 A. Certainly I recall one. That is
19 my answer.

20 Q. With regard to any of those
21 flashlights, the one, or if there was more
22 than one, but in particular with regards to
23 the one, were any of the officers asked to
24 identify any of the flashlights?
25

Collins

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1 of the one on the bottom right corner which
2 highlights the Y suture, which really is
3 dispositive of no injuries.

4 Q. With regard to the injuries which
5 are depicted in the other three, aside from
6 the Y sutures, was there specific testimony as
7 to each of these injuries by the Medical
8 Examiner?

9 A. I believe so.

10 Q. At any time did the Medical
11 Examiner indicate as you recall, let's start
12 with the one in the upper left-hand corner --

13 A. Okay.

14 Q. -- was there any opinion offered
15 as to the instrumentality of any of the
16 injuries which are depicted in that
17 photograph?

18 A. I don't specifically recall that
19 at this time.

20 Certainly the doctor testified
21 that some of the injuries were consistent with
22 or not inconsistent with having been caused by
23 the department issued flashlight, which was
24 the subject of some discussion.
25

Collins

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Q. Were there any other discussions with regard to instrumentality other than the flashlight?

A. We may have talked about hands and feet as additional instrumentalities. I don't specifically recall.

Q. Sir, the same questions for the upper right-hand corner and lower left-hand corner. Was there any discussion as to the injuries which are depicted in those photographs as to instrumentality leading to those injuries?

A. There was certainly discussion of the depicted injuries.

Whether the doctor was able to attribute them to a specific instrumentality, I don't recall.

Q. When the subject officers testified, were they allowed to testify in the narrative? I just wanted to clarify that.

A. They were allowed to testify in the narrative, as is required by law.

Q. At that time would it be accurate to say that none of those officers were under

Collins

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called Waiver Of Immunity Forms.

MR. BREWINGTON: Right. Well, whatever they are, my question is maybe you could just look for them.

I didn't see them. If I missed them, I'm sorry that I did.

A. Each quote unquote targeted officer executed one of those documents in the presence of his attorney before the Grand Jury.

Q. Was there anything -- and I understand those forms, those are forms that are filled out before they actually go into the Grand Jury.

A. No. They are actually filled out in the presence of and executed before the Grand Jury.

Q. When you say "executed" before, in the front of --

A. In front of. Not ahead of time.

Q. So my question is again: Was there correspondence other than the Waiver Of Immunity forms that we commonly see when someone goes in and waives immunity before a

Collins

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arrest; is that correct?

A. True.

Q. Those officers at that time had been informed that they were the subject of the Grand Jury investigation?

A. As required by law they were.

Q. Were there written documents advising them of that?

A. There were.

Q. Did you keep copies of those documents?

A. I kept the originals. And I believe there may be copies as well.

Excuse me. And they were entered as exhibits before the Grand Jury.

Q. As best you recall, were copies of those documents provided to Mr. Dunne on your behalf?

A. I believe so.

MR. BREWINGTON: Mr. Dunne, I'm just going to ask that you take a look at some point. I don't recall seeing them.

MR. DUNNE: They are commonly

Collins

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Grand Jury, were there correspondence which were sent to these officers indicating to them that they were targets of the Grand Jury investigation?

A. No.

Q. Were there any correspondence from yourself or to you from their lawyers which indicated that they had been informed that they were targets of the Grand Jury investigation, other than the Waiver of Immunity forms?

A. No.

Q. Sir, when each of these officers testified in the Grand Jury, that being the officers that were identified as targets, were they asked questions from their written statements, that being were there statements --

MR. BREWINGTON: Withdrawn.

Q. -- were there questions which were asked of them utilizing portions of their written statements which had been previously provided?

A. I don't recall.

Collins

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Q. At any time were the officers asked to demonstrate anything in the Grand Jury?

A. I don't recall whether they were specifically asked.

But I do recall at least one officer engaging in a demonstration in his narrative.

Q. Would that be Officer Judge?

A. I believe Judge definitely did. And I don't recall if Scimone did as well.

Q. Do you recall what it was that Officer Judge demonstrated, if anything?

A. He demonstrated his actions and his positions relative to the roadway in the course of his physical confrontation with Mr. Lazo.

Q. Sir, at any time during the Grand Jury presentation, were there any specific questions that you asked of the target officers?

A. I don't remember.

Q. Was there anything about their testimony which lead you to ask questions

Collins

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which in any way related to his race or ethnicity?

A. I am not sure I understand.

Q. Was there ever any discussion about how the officers interacted with Mr. Lazo with regard to the stop, the physical interaction, or the treatment that he received or did not receive in the precinct which in any way related to him being an Hispanic man?

A. I don't recall any discussion whatsoever with anyone involved in the case with regard to Mr. Lazo's race or ethnicity.

Q. Was that ever a consideration?

A. I don't understand.

Q. Was that ever anything either by you -- particularly by you in looking at whether or not Mr. Lazo was treated in any particular fashion because of his race or ethnicity?

A. I don't believe Mr. Lazo's race or ethnicity was a factor in this case at all.

Q. And I appreciate that response.

My question was: Was that ever a consideration that you made or a consideration

Collins

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based on there appearing to be inconsistencies?

A. I still don't remember.

Q. Was there anything from any of their reports that appeared to be inconsistent that you asked them questions about?

A. I don't recall. I'm sorry.

Q. That is okay. You have been doing a lot since then, I'm sure.

MR. BREWINGTON: Let's take a two minute leg stretch.

(Recess taken.)

Q. With regard to the fact that Mr. Lazo was a male Hispanic, was that anything which was ever discussed in your office with either the detectives, investigators, or amongst your staff?

A. I don't think so.

Q. Was there ever any question raised about the treatment that was afforded to Mr. Lazo concerning --

MR. BREWINGTON: Withdrawn.

Q. Was there ever any discussion about the treatment that Mr. Lazo received

Collins

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that you went through?

A. Did his race or ethnicity ever cross my mind?

Q. With regard to the treatment that he was subjected to.

A. I am not even sure I knew Mr. Lazo's ethnicity.

Q. With regard to Mr. Lazo's ethnicity, to this day do you know what his ethnicity is?

A. I believe him to be of Hispanic descent.

Q. When for the first time, if at all, do you recall learning that?

A. I'm not sure if it is referenced in the autopsy report or not.

Can I look at that?

Q. Sure, why don't you take a look?

A. (Perusing.)

Q. First page.

A. The autopsy report refers to him as "White."

Q. On the first page as well (indicating)?

Collins

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A. The race is listed as "White."

However, I do recall in the course or the -- in the course of the case that he -- I think his mother's name was Gonzalez, if I recall.

Q. Sir, with regard to your investigation in this case, was there any question asked of the subject officers if they filled out Use Of Force forms?

A. I don't recall asking that.

Q. Are you familiar with that form?

A. I have heard of the form. I'm not positive that I have seen one in recent years.

But my understanding also is that a supplementary report may supplement that requirement.

Q. The Use Of Force form or Use Of Force report, do you know if any of the subject officers issued any supplemental reports?

A. I believe they wrote supplementary reports.

Q. Do you know why they did not

Collins

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ordinary course.

Q. Did you see one in this case?

A. I'm sure I did.

MR. BREWINGTON: Let us mark this as Collins 10 for identification. Multiple-page document that in the upper right-hand corner says "ME number 08-1311 Death Report."

{Plaintiffs' Collins Exhibit 10, ME # 08-1311 Death Report, marked for identification.}

Q. {Hanging.} Sir, do you have that document before you?

A. {Perusing.} I do.

Q. Have you seen this document before?

A. I have.

Q. In what context have you seen it?

A. I have seen it with regard to Detective Portela and Sgt. Fandrey explaining their investigation to me.

And I believe a copy of that report has been in my file since I received it.

Collins

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issue any reports initially?

A. I'm not sure what that question means.

Q. Did they issue any reports initially?

A. That wasn't your question.

Q. I'm now asking a different question.

A. I don't remember.

Q. Were there any reports, that being Use Of Force reports, utilized as Grand Jury exhibits?

A. I don't believe so.

Q. Were any of the written statements made by officers utilized as Grand Jury exhibits?

A. I don't believe so, but I don't specifically remember.

Q. Was a death report prepared by the Suffolk County Police Department prior to the Grand Jury presentation?

A. I would certainly expect that they did prepare one prior to then. I don't specifically remember. But that would be the

Collins

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Q. Was this report, which appears to have I think nine pages or ten pages in total, which is back and front, was this marked and identified as a Grand Jury exhibit?

A. I don't believe so.

Q. Just as Mr. Dunne just pointed out, the description of the deceased here indicates the race is "White." Do you see that?

A. It does say that.

Q. At the time of this report, had you seen photographs of Mr. Lazo?

A. At the time of this report?

Q. Yes, sir.

A. No.

Q. When for the first time did you see photographs of Mr. Lazo?

A. Probably in my meeting with the Medical Examiner toward the end of June or early July.

Q. At any time --

A. There may have been one in the newspaper. I don't remember.

Q. At any time in your discussion

Collins

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with these investigators or the District Attorney's Office, was there any discussion about Mr. Lazo having been identified as being an individual of the White race?

A. I don't believe so.

There is also a classification of White Hispanic. I don't know if the Police Department has changed that designation or not.

But since it never came up, I can't tell you what it meant.

Q. Very well. I appreciate the fact that you cannot tell me that. I can only ask you to tell me what you can tell me.

With regard to this document, did either one of the investigators, that being Fandrey or --

Is it Portelo?

A. Portela.

Q. -- testify in the Grand Jury?

A. Portela did. I don't believe Fandrey did.

Q. Was there a particular aspect of the Grand Jury presentation that Portela was

Collins

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and the pages which make up the nine or ten pages that are here, did you have any questions about any aspect of this report that was of concern to you that you raised to the investigator?

A. I believe I talked with the investigator about everything that is included in this report. Whether that makes it a concern to me or not, I don't know. But we discussed every aspect of this report.

Q. Was there anything in this report about which you had any particular questions as to either not understanding or needing further clarification of?

A. Anything that required further clarification I attempted to get from the referred to witness themselves.

Q. During the Grand Jury presentation?

A. Or in my interviews if it was not a target police officer.

Q. What other officers, other than the target officers, did you interview? I think you mentioned Talt was one.

Collins

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asked to testify about?

A. He testified regarding his investigation. He testified with regard to what his investigation revealed as a quote unquote timeline.

He testified I believe to the procurement of the radio tapes that were introduced and their authenticity. That is what I specifically remember.

Q. With regard to his timeline, was there a document or an exhibit utilized to present a timeline to the Grand Jury?

A. I believe there was.

Q. Was that in the form of a demonstrative exhibit?

A. I think it was in the form of a typewritten document.

Q. Was that part of the documents that you supplied to the County Attorney's Office?

A. It was. Whether it be as part of the Grand Jury exhibits or part of my file, I believe it was.

Q. With regard to this death report

Collins

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A. Talt was certainly one. Link was another.

The officers listed on page 6, the ones listed seriatim at the bottom. I interviewed all of them.

Q. That would be "Broderick, Cotter, Friedrich, Quesada and Zurl"?

A. That's correct.

Q. In any of those interviews, did you take any notes?

A. I did not.

Q. For any of those interviews, did you have statements written by those individuals in front of you from which to work?

A. If they had written one, I had it.

Q. Other than those individuals that are referenced on page 6, the officers, and Officer Link and Officer Talt, did you speak to any other members of the Suffolk County Police Department as part of your investigation?

A. Detective McAlvin who interviewed

Collins

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911 caller Mr. Morrow that is referenced on page 3. I also interviewed Mr. Morrow. Also there is a Mr. Baratta on page 3, I believe another 911 caller. I interviewed him.

I interviewed "Sgt. Koerber," referred to on the first page.

There are civilians mentioned on page 8, one being a "Leslie Brewster." I interviewed her.

Also another gentleman referred to, "Eric Melendez," on that same page. I did not interview him, but I did have access to the sworn statement he gave the investigating police officers.

Q. Any others that you can recall?

A. Again, there is the gentleman from Fire and Rescue with regard to the defibrillator and its usage and its capacities. I don't remember his name. But he testified in the Grand Jury.

Q. With regard to Eric Melendez, you indicated that you didn't interview Mr. Melendez. What was the reason?

A. Mr. Melendez was a witness that

Collins

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Q. If this helps refresh your recollection, if you go to page 8, the last paragraph.

A. (Perusing.) That is what it says.

Q. At that time did you have any belief or sense that Mr. Lazo was a Hispanic male?

A. I guess I had a sense.

Q. Anyone else that you recall describe Mr. Lazo as an Hispanic male other than Lesley Brewster that you recall?

A. I don't recall how the target quote unquote police officers referred to him.

I know they took various information from him on the traffic stop, I think, including his license.

I don't know how he is designated or characterized on his driver's license.

It really didn't make any difference to me.

Q. Sir, let me ask you to take a look -- we will do two documents side by side.

MR. BREWINGTON: Mark these,

Collins

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was given to us by Mr. Chakmakian in my first conversation with him during the first week following this incident.

And the information that Mr. Chakmakian gave to me over the telephone was immediately given to the Homicide investigators. And they interviewed Mr. Melendez.

And I was of the opinion that Mr. Melendez's information was not relevant to the proceeding as explained to me. And I did not call him or interview him.

Q. At the time that you actually received this document, did you speak to -- I think you said you spoke to Lesley Brewster?

A. Yes. She testified in the Grand Jury.

Q. Did she indicate that she saw Mr. Lazo?

A. Yes.

Q. She indicates that she saw him and described him as "Puerto Rican man"?

A. I don't specifically recall that, but I'm not taking issue with that.

Collins

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please, as Collins 11 and 12.

(Plaintiffs' Collins Exhibit 11, Letter dated October 14, 2008, marked for identification.)

(Plaintiffs' Collins Exhibit 12, Grand Jury Subpoena, marked for identification.)

Q. (Hanging.)

A. (Perusing.) I have seen both.

Q. Sir, do you recognize these documents?

A. I certainly recognize 12.

I'm not positive I recognize 11. But 11 pertains to 12.

Q. I showed them in sequence to you just so you had them both in your hand. It seems like they kind of --

A. It looks like one begat the other.

Q. Yes. The reference in -- let's go to 12, because that may be the document that you are most familiar with.

A. Okay.

Q. That is a Grand Jury subpoena?

Collins

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A. Um hum.

Q. Is that correct?

A. It is.

Q. That is issued by you as an Assistant District Attorney?

A. It was.

Q. Who is it issued to, please?

A. It says "Robert Delagi, Chief Pre-Hospital Medical Operations and Acting Director."

Q. Acting Director of what?

A. I'm trying to remember.

I believe he had a position at the hospital to which your client was taken. And I think that was Southside.

Q. Did you get a response to this subpoena, if you recall?

A. I believe we did.

Q. Now, the issuance of this subpoena like --

MR. BREWINGTON: Withdrawn.

Q. Was the issuance of this subpoena part of an authority that you understood you had at the time that you issued it?

Collins

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hospital or to bring records in?

A. Ambulance personnel testified.

I don't recall if any hospital personnel testified.

Q. With regard to the Medical Examiner of Suffolk County, was a subpoena issued for the Medical Examiner?

A. It wasn't necessary.

Q. Was there any requirement --

MR. BREWINGTON: Withdrawn.

Q. Was there anything which was given to the Medical Examiner requiring the Medical Examiner to come in and testify before the Grand Jury?

A. No. I called her and asked her to do so, and she agreed.

Q. Other than the Medical Examiner testifying in the Grand Jury, were there any other persons that came to testify with any technical expertise, that being, you know, potential experts or persons to talk about any technical aspects of the case?

A. The defibrillator fellow, whose name I can't remember, and also some of the

Collins

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A. Of course.

Q. Could you do this for any witnesses that you felt or thought were relevant to provide information to the Grand Jury?

A. Yes.

Q. Is that true of civilian witnesses as well as members of the service, that being the Police Department?

A. Civilian witnesses, but not expert witnesses.

Q. When you say "not expert witnesses," it was your belief that such a subpoena was not available to you to issue to let's say Dr. Thanning?

A. That is my understanding.

Q. What do you base that on?

A. I don't believe that I can compel an expert to come before the Grand Jury and offer an opinion.

Q. What do you base that on?

A. Law school.

Q. With regard to the hospital, did anyone come in to testify on behalf of the

Collins

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responding police officers had EMT, or AEMT, or PA training. So I guess they would be experts to some degree insofar as their medical response.

Q. Did they appear by Grand Jury subpoena?

A. They appeared by virtue of a teletype to the Police Department, which doesn't have the same claws.

Q. With regard to them, you didn't have to subpoena them, it wasn't necessary?

A. It was not.

Q. Basically you just asked that they be present, and then their commands told them to be present?

A. That is true.

Q. With regard to this subpoena that is before us, Collins 12 for identification, how was this provided, if you recall?

A. This subpoena emanates from an interview I had with some of the ambulance personnel who transported Mr. Lazo.

And I became aware in that interview that there may have been documents

Collins

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or recordings that I did not receive from the hospital when I subpoenaed the hospital records.

The ambulance crew chief lead me to believe that there were either recordings or documents as a result of the ambulance's conversations with the hospital while en route.

And this subpoena was drafted as a result of my interview with the ambulance crew chief to find out whether or not such recordings or writings existed outside the four corners of what I received as quote unquote hospital records.

Q. As a result of your inquiry, did you learn if there were further documents and/or recordings?

A. I know there was a response to the subpoena.

I do not recall if materials were delivered or whether I was told that there were no such records. I don't specifically remember.

If I got them, they were in my

Collins

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records from the officers?

A. I don't think so. I don't believe so.

Q. Did the investigators or did you ever attempt to subpoena the telephone records of the police officers?

A. I don't think we did.

If I did, it was in my file.

MR. BREWINGTON: Let's take a break.

(Recess taken.)

Q. Mr. Collins, did you ever see any photographs of Mr. Lazo's car?

A. Yes.

Q. Were those part of what was turned over as part of your file?

A. If not my file, the police file certainly.

I mean there were photos of his car and its interior introduced into evidence in the Grand Jury.

Q. With regard to Mr. Lazo's condition at the time that he arrived at the precinct, what did you understand based on the

Collins

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file.

Q. With regard to the presentation itself, were there recordings which were presented to the Grand Jury, whether or not they were from the hospital or from police recordings?

A. Police recordings were certainly presented.

The radio, or what they call car to car transmissions, were played for the Grand Jury.

I don't recall specifically whether I got any hospital recordings that I referred to earlier.

But I don't believe if I got them, that they were played. I don't recall playing anything other than perhaps 911 calls and the car to car transmissions.

Q. At any point during the conversation --

MR. BREWINGTON: Withdrawn.

Q. At any time during the presentation to the Grand Jury, was there ever any discussion about subpoenaing telephone

Collins

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testimony to be his condition at the time that he arrived at the precinct based on the investigation and what you learned?

A. My understanding is he arrived at the precinct in the company of Officer Link looking like he had been in a physical altercation.

As he passed the cell in which Lesley Brewster was housed was conversant and responsive to the officer accompanying him, which I know to have been -- um --

There came a point after he was seated in one of the rooms adjacent to the squad room and was in the process I believe of talking to Detective Talt where he appeared to go into distress of some type.

Officers with medical experience responded to the Squad Room. And they worked on him in that area.

Q. Did you at any time ask any of the subject officers, the target officers, whether or not the bruises and injuries that were present in what we marked as Collins' 8 for identification -- I'll place that back in

Collins

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front of you so you can see it. Did you ask any of the officers if those injuries which are identified in that photograph were seen by them when Mr. Lazo was in their presence?

A. I don't recall specifically asking the officers that about each individual injury that may be presented in that photograph.

I did ask them questions or they volunteered in the Grand Jury about areas of the body of Mr. Lazo that they struck either with their hands or with their flashlight or flashlights.

I did not attempt to account for every single minor injury that Mr. Lazo suffered in the Grand Jury.

Q. I understand with regard to any sense of any minor injury.

I am actually referring to the injuries that are depicted in this photograph, which is Collins 8 for identification.

Was there any specific questions to the officers about their observations of Mr. Lazo in seeing those injuries when he was

Collins

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A. No.

Q. With regard to the officers' testimony provided to you or provided to the Grand Jury when these officers did testify, were there any questions of them about their consulting with other officers prior to their testimony?

A. I don't recall specifically asking that question.

Q. Sir, have you seen any letter or correspondence from the U.S. Department of Justice to Mr. Levy of the Suffolk County government?

A. I have seen many documents over the years.

Q. In particular with regard to anything within the past month and a half or two months, have you seen any letter from the Department of Justice referring to technical assistance to the Suffolk County Police Department?

A. I believe I saw the letter that you are referring to. In particular I recall a newspaper article about it. I'm not sure I

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in their presence?

A. I don't think so.

Q. Did you in your capacity as an Assistant District Attorney have any reporting requirements to any New York State agency about your investigation or the death of Kenny Lazo?

A. Other than to report the findings of the Grand Jury, no.

Q. With regard to the officers' testimony that was provided, did you find as part of their testimony anything which you particularly questioned them on that was inconsistent one with the other?

A. I don't recall specifically doing that.

Q. Was there any aspect of any one officer's testimony or any number of officers' testimony that came before the Grand Jury that you found unbelievable?

MR. DUNNE: Object to the form of that on many grounds.

For our purposes today, you go ahead and answer that as best you can.

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have seen the entire letter.

Q. Have you had any conversations with anyone about any portion of the letter?

A. Maybe my wife.

Q. Other than your wife?

A. I don't believe so.

Q. Anyone related to the office, that being the Police Department and/or the District Attorney's Office?

A. The Police Department, no.

Members of the office, perhaps at the water cooler as a result of the newspaper article, but nothing that I would call official.

Q. Sir, with regard to the Justice Department, have you been asked to provide them with any information relative to any investigation that they have been involved with relating either to the death of Kenny Lazo or their investigation of the Police Department's interaction with members of the Hispanic community?

A. Yes.

Q. What have you been asked to

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C E R T I F I C A T E

STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

I, FLORENCE SYSKROT, a Notary
Public within and for the State of New
York, do hereby certify:

That JOHN B. COLLINS, ESQ., the
witness whose deposition is hereinbefore
set forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by such witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 21st day of
October, 2011.

Florence Syskrot

FLORENCE SYSKROT

*** ERRATA SHEET ***
REALTIME REPORTING, INC.
124 East Main Street, Suite 202
Babylon, New York 11702
516-938-4000

NAME OF CASE: GONZALEZ -V- COUNTY OF SUFFOLK
DATE OF DEPOSITION: OCTOBER 12, 2011
NAME OF WITNESS: JOHN B. COLLINS, ESQ.

FROM	TO	REASON

all references to Mr Spota should be

John B. Collins

JOHN B. COLLINS, ESQ.

Subscribed and sworn before me
this 25th day of November, 2011.

Rosanne Giese

(Notary Public)

My Commission Expires: February 26, 2014

ROSA M. GIESE
Notary Public, State of New York
No. 0104412602, Suffolk County
Term Expires February 26, 2014

EXHIBIT B

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1
2 (Collins Exhibit A, Portion of
3 grand jury minutes, premarked for
4 identification.)
5 (Collins Exhibit B, Autopsy
6 report, premarked for identification.)
7 JOHN B. COLLINS, ESQ.,
8 called as a witness, having been duly
9 sworn by a Notary Public, was examined
10 and testified as follows:

11 EXAMINATION BY
12 MR. CALLISTE:

13 Q. Please state your full name for
14 the record.

15 A. **John B. Collins, Esq.**

16 Q. What is your address?

17 A. **210 Centre Drive, Riverhead, New
18 York 11901.**

19 Q. Good afternoon, your Honor.

20 A. **Good afternoon.**

21 Q. My name is Gregory Calliste, Jr.
22 I'm an associate at the Law Offices of
23 Frederick K. Brewington.

24 A. **Nice to meet you.**

25 Q. Nice to meet you as well.

6

1 Collins

2 We represent the plaintiff and
3 the family of Ms. Gonzalez, Mr. Lazo,
4 representing the estate of Mr. Lazo in this
5 lawsuit filed against the County of Suffolk.

6 As I understand, you've already
7 sat in for a deposition one time with
8 Mr. Brewington in this matter.

9 A. **About three years ago.**

10 Q. That's right.

11 At first I was referring to this
12 as a continued deposition, but as per our
13 agreement with your counsel this is a new
14 deposition regarding some items that have been
15 released by the Federal Court, that being the
16 grand jury minutes, and this deposition is
17 pertaining to that item and any closely
18 related items or matters.

19 We are conducting a deposition
20 today just to ask a few follow-up questions,
21 if you will, regarding your involvement in the
22 grand jury presentment with respect to
23 Mr. Lazo, and I do understand that you have
24 taken a deposition before.

25 A. **That's correct. I think I**

7

1 Collins

2 **understand why we're here.**

3 Q. Right.

4 A. **We're here because I was ordered
5 to be here.**

6 Q. Absolutely.

7 A. **Here I am.**

8 Q. Welcome.

9 A. **Thank you.**

10 Q. Just a few ground rules. As you
11 know, the court reporter can't record gestures
12 such as shrugging the shoulders or head nods.
13 We ask that you keep all your responses
14 verbal.

15 You can take a break at any time.

16 We just ask that if there is any questions
17 pending that you answer the question first to
18 the best of your ability before speaking to
19 counsel, as well as taking breaks for any
20 reason.

21 A. **Fine.**

22 Q. Sir, have you reviewed any
23 documents in preparation for this deposition
24 today?

25 A. **Only Judge Brown's or Magistrate**

8

1 Collins

2 **Brown's electronic decision.**

3 Q. Okay.

4 That was the decision wherein the
5 grand jury minutes were released; would that
6 be accurate?

7 A. **I believe so.**

8 MR. O'BRIEN: I object. A
9 portion of the grand jury minutes were
10 released.

11 Q. Wherein a portion of the grand
12 jury minutes were release, right?

13 A. **What I recall from Judge Brown's
14 order was that I was ordered to sit for
15 another 90 minutes and have questions asked by
16 your firm with restrictions that were placed
17 on the record of which I'm unaware.**

18 Q. Okay, very well.

19 In preparation for your
20 deposition today, did you review the grand
21 jury minutes that are at issue in this
22 deposition?

23 A. **No, sir.**

24 Q. At any time after the grand jury
25 minutes were -- or a portion of the grand jury

9

1 Collins

2 minutes were released by the judge or by the
3 court, did you review any portion or portions
4 of that -- of those grand jury minutes?

5 **A. No, sir.**

6 **Q.** During your last deposition with
7 Mr. Brewington you were asked several
8 questions regarding the presentment to the
9 grand jury with respect to the investigation
10 into the death of Kenny Lazo. Did you refresh
11 your recollection as to any of those questions
12 that were previously asked by Mr. Brewington?

13 **A. No, sir. I haven't seen my**
14 **deposition minutes since I settled them.**

15 **Q.** Okay.

16 You did read that deposition at
17 some point then, correct?

18 **A. On the date of settlement,**
19 **whatever date that was.**

20 **Q.** All right.

21 Sir, at any time following that
22 deposition up to this date, did you review any
23 items that were placed before the grand jury,
24 any exhibits or any testimony, any notes,
25 anything in that regard?

10

1 Collins

2 **A. No, sir.**

3 **Q.** Did you speak to anyone in
4 preparation for your deposition, other than
5 your counsel?

6 **A. No, sir. Other than saying hello**
7 **to Mr. Mitchell this morning or this**
8 **afternoon.**

9 **Q.** Okay.

10 During your last deposition you
11 indicated that the DA's office and/or you
12 would have maintained some sort of file
13 related to your presentment to the grand jury
14 in this case. Do you recall saying --

15 **A. The DA's office would have a**
16 **file.**

17 **Q.** At that time Mr. Brewington made
18 a request for those items and for the -- a
19 copy of the file that was maintained by the
20 district attorney's office. Are you aware as
21 to --

22 **A. Not of me.**

23 **Q.** Well, the request was made of
24 your counsel at that time through you.

25 **A. My counsel at that time was the**

11

1 Collins

2 **county attorney.**

3 **Q.** Right. My question is: Was
4 there any discussions with the county attorney
5 regarding the procurement of that file and/or
6 releasing of that file to us?

7 **MR. MITCHELL:** I object to that,
8 other than him answering yes, he may
9 have discussed that. Beyond that, it's
10 privileged.

11 **A. I don't recall discussing it. I**
12 **thought they already had the file.**

13 **Q.** Okay.

14 Have you seen any of those items
15 or that file at all following your deposition
16 with Mr. Brewington that day?

17 **A. No, sir.**

18 **Q.** Based upon your testimony thus
19 far, would it be accurate to say that your
20 recollection of the events is the same as --
21 right now as they were at the time or maybe
22 even you have less recollection seeing as how
23 the time has past than you did you were
24 deposed by Mr. Brewington?

25 **A. Hopefully it's as good, but I**

12

1 Collins

2 **don't really know.**

3 **Q.** Okay.

4 At any time following your
5 deposition with Mr. Brewington previously, did
6 you look into at all the questions that you
7 have asked or posed to the medical examiner
8 during the investigation into the death of
9 Kenny Lazo?

10 **A. No.**

11 **Q.** I'm going to place --

12 **A. If I may, I want to correct**
13 **something, if I might.**

14 **Q.** Certainly.

15 **A. There was a point where Mr. Spota**
16 **and I had to engage in correspondence to**
17 **request counsel, so there were those**
18 **discussions and a letter to the county**
19 **attorney requesting counsel once Mr. Dunne had**
20 **left the office. Other than that, my answer**
21 **stands.**

22 **Q.** Very well.

23 I'm going to show you what's been
24 previously marked as Collins A.

25 **MR. CALLISTE:** I'm sorry I only

13

1 Collins
 2 have one copy at this point.
 3 MR. MITCHELL: That's okay.
 4 **Q.** It's a copy of the grand jury
 5 minutes that were -- or a portion of the grand
 6 jury minutes that were released by the court.
 7 Sir, do you have that document
 8 before you?
 9 **A. I have what is marked as Collins**
 10 **A before me.**
 11 **Q.** During your presentment of
 12 this --
 13 MR. CALLISTE: Withdrawn.
 14 **Q.** During your questioning to the
 15 medical examiner during your presentment of
 16 this matter to the grand jury, do you recall
 17 asking the medical examiner questions with
 18 respect to the injuries that were sustained by
 19 Mr. Lazo?
 20 **A. Yes, sir.**
 21 **Q.** With regard to those questions,
 22 do you recall asking the medical examiner
 23 particularly about specific bruises that were
 24 found on Mr. Lazo's person, on his body?
 25 **A. I do recall asking the medical**

14

1 Collins
 2 **examiner about injuries on Mr. Lazo's body,**
 3 **including bruises.**
 4 **Q.** Okay.
 5 During your questioning of the
 6 medical examiner, in those questions you
 7 asked, you elicited testimony from the medical
 8 examiner regarding the fact the injuries seen
 9 on Mr. Lazo were not life threatening. Do you
 10 recall that inquiry?
 11 **A. Specifically, no.**
 12 **Q.** If you will --
 13 **A. Sure.**
 14 **Q.** -- with respect to the Collins A,
 15 turn to page 11.
 16 **A. I left my glasses inside. Can I**
 17 **go get them. I'm sorry.**
 18 **Q.** Certainly.
 19 (Discussion off the record.)
 20 **Q.** If you would take a moment, I
 21 guess page 11 beginning at line 18, if you
 22 could just review that.
 23 **A. I see that question.**
 24 **Q.** Okay.
 25 Just for the record, this

15

1 Collins
 2 question at page 11 line 18 of the deposition
 3 states: "Question: Did you find any injuries
 4 in your autopsy of Mr. Lazo that were
 5 life-threatening injuries?"
 6 **A. That's what it says.**
 7 **Q.** Right.
 8 "Answer: No, there were no
 9 injuries to any of the life sustaining organs,
 10 the brain, the heart, no areas of major
 11 internal hemorrhaging."
 12 Do you see that there?
 13 **A. I see it.**
 14 **Q.** At that time you went on to
 15 discuss photographs that were previously
 16 marked. Do you see that there?
 17 **A. I see that at the very end of**
 18 **page 11.**
 19 **Q.** Sir, do you recall at all ever
 20 asking the medical examiner whether any of the
 21 injuries that Mr. Lazo sustained could have
 22 contributed to his death, whether life
 23 threatening or not?
 24 **A. I don't recall if I asked that**
 25 **specific question.**

16

1 Collins
 2 **Q.** Is that a question that you would
 3 have asked or do you believe that's a question
 4 that you would have asked pursuant to a
 5 presentation wherein an individual has expired
 6 as a result of actions taken by the subjects
 7 of that investigation?
 8 MR. MITCHELL: I object.
 9 **A. I --**
 10 MR. O'BRIEN: Objection.
 11 **Q.** Sir?
 12 THE WITNESS: Do I answer now?
 13 DI MR. O'BRIEN: We're not going to
 14 have him answer. I'm objecting to form.
 15 **Q.** Sir, do you understand my
 16 question?
 17 **A. I think I do.**
 18 **Q.** Can you answer my question,
 19 please.
 20 MR. O'BRIEN: I object to form.
 21 **A. I'm not going to answer it if my**
 22 **lawyer tells me not to.**
 23 MR. CALLISTE: Under Federal
 24 Rules, as you know -- hopefully you
 25 know, that's not a proper objection. If

17

Collins

the witness understands the question, you can only direct him to not answer questions that are based on privilege.

MR. O'BRIEN: You can answer, then.

A. Can you ask it again, please, just so I'm sure now. I apologize.

Q. Certainly.

MR. CALLISTE: Can we have it read back.

THE WITNESS: That would be fine.
(Record read.)

A. There are no normal questions in any death investigation that I'm aware of. Each case is peculiar to its own facts. Sometimes I might have. Sometimes I wouldn't have.

Q. In this situation here where Mr. Lazo died after his interaction with the police or shortly thereafter and that being the subject of this investigation, do you believe that whether the injuries that were sustained by Mr. Lazo, which were not life threatening, do you believe that it would have

18

Collins

been important to ask the medical examiner or to explore the issue as to whether the injuries sustained by Mr. Lazo were life threatening?

MR. MITCHELL: I object to form.

MR. O'BRIEN: Do you understand that question?

THE WITNESS: That question is a little confusing.

Q. Let me ask again.

A. Sure.

Q. Is it your understanding that Mr. Lazo died in the police precinct that evening, on the evening of the incident?

A. My understanding is he died at the hospital. He may have been without vital signs and the like at the precinct, but I don't think he was declared dead until the hospital.

Q. Certainly, but is it your understanding that Mr. Lazo died as a result of and/or immediately following his interactions with the officers here?

A. It's my -- it's my understanding

19

Collins

that Mr. Lazo died at some point after his interaction with the officers. I would not describe it as immediate.

Q. Right.

Based on the report of the medical examiner, is -- what do you recall regarding what the cause of death was?

MR. MITCHELL: I object to the form.

MR. O'BRIEN: You can answer, though, if you know.

A. I don't recall the specific cause of death. I know the medical examiner was brought to the grand jury to testify to it.

Q. Right.

Do you recall whether Mr. Lazo did, in fact, have injuries that were visible to his body?

A. Absolutely.

Q. Do you think that it, at that point, was relevant to discuss with the medical examiner during this presentment whether those injuries could have contributed to his death?

20

Collins

A. I believe I discussed all of the injuries that Mr. Lazo exhibited with the medical examiner before the grand jury, and I let the medical examiner tell the grand jury the significance of those injuries.

Q. My question is: Do you believe that it was -- it would have been important to ask the medical examiner the question as to whether those injuries contributed to his death?

MR. MITCHELL: I object to form.

MR. O'BRIEN: You can answer it anyway.

A. Do I believe?

Q. Correct.

A. I believe I did a thorough examination of the medical examiner with regard to Mr. Lazo's injuries and any effect they may have had on his death before the grand jury. That's what I believe.

Q. Well, I'm not sure that your answer is responsive to my question, which is: Do you believe that it would have been important to ask the medical examiner in this

21

Collins

situation whether any of those injuries that were not life threatening could have contributed to his death?

MR. MITCHELL: I object to the form.

MR. O'BRIEN: I object to the form.

Do you understand that question?

Q. It's the same question?

A. Yeah, I know. I already answered it. You just told me it's the same question. I gave you my answer.

Q. Well, I don't believe that your answer, respectfully, was responsive to my question.

A. I take your objection respectfully.

Q. Judge, I do understand that you are a judge.

A. Today I'm not --

Q. In this situation --

A. -- as far as I'm concerned, so you don't have to worry about that.

Q. I'm asking you if you could

22

Collins

please answer my question, please, the question before you.

MR. O'BRIEN: I object to the form again.

Can you answer?

A. I believe I did discuss with the medical examiner the cause of death and any contributory factors to the death in front of the grand jury, and I let the medical examiner explain the significance of those injuries to the grand jury, because I have the wrong letters after my name.

Q. The wrong letters after your name, I'm --

A. I'm not an expert. I'm not a medical expert.

Q. Very well.

A. I let the medical examiner explain the cause of death to the grand jury and any injuries that were apparent or significant.

Q. Do you specifically recall asking the medical examiner with respect to any injuries that were significant?

23

Collins

A. I --

Q. Do you have a specific memory of that?

A. Sure.

Q. Could you show me where you asked that question to the grand jury?

A. I believe I used photographs and asked the medical examiner to describe the injury and then describe its possible effect, if any, on Mr. Lazo's demise.

Q. With respect to those photographs that you just indicated you showed the medical examiner --

A. The grand jury minutes says I did.

Q. Yes, do you recall how many photographs you showed to the grand jury?

A. No.

Q. Do you recall how many photographs were contained in your file with respect to the injuries sustained by Mr. Lazo?

A. The specific number? No.

Q. Yeah.

A. Many.

24

Collins

Q. Do you know how many photographs were included with the autopsy report, if any?

A. I'm not sure I understand that one.

Q. Were there any photographs relied upon by the medical examiner in making her determination as to the --

A. She has an entire --

(Reporter clarification.)

Q. -- as to Mr. Lazo's autopsy?

A. I know the medical examiner has a large number of photos both external and internal with regard to her investigation of Mr. Lazo's death. I had access to those photographs for purposes of the grand jury presentation. How many there were, I don't know. How many I used, I don't recall.

Q. Well, you indicated that you do recall presenting them or some photos to the grand jury, correct?

A. Absolutely.

Q. Do you know if you presented them all?

A. I doubt it.

25

1 Collins

2 Q. Who made the determination as to

3 what pictures you would present to the grand

4 jury and what pictures you would exclude?

5 A. **Myself and the medical examiner**

6 **in conjunction, and then, had the grand jury**

7 **requested any more or further photographs,**

8 **they would have been provided, if they**

9 **existed.**

10 Q. Well, was the grand jury advised,

11 to your recollection, as to whether there were

12 more photographs for them to review if they

13 wanted to?

14 A. **I doubt it.**

15 Q. Directing your attention --

16 A. **I doubt it by me. I don't know**

17 **if the medical examiner did or not.**

18 Q. Directing your attention to

19 page 12 of the minutes --

20 A. **Yes, sir.**

21 Q. -- if you could just take a

22 moment to review that page and I will ask you

23 a question.

24 A. **I did.**

25 Q. Okay.

26

1 Collins

2 Here you indicate that -- well,

3 on this page you ask the medical examiner

4 whether she is familiar with Photographs 39

5 through 55. Do you see that there?

6 A. **I do, line 6.**

7 Q. Right.

8 With respect to --

9 MR. CALLISTE: Withdrawn.

10 Q. Do you know if there were

11 Pictures 1 through 39?

12 A. **I don't remember what the first**

13 **38 exhibits were.**

14 Q. My question to you is: Do you

15 know if those first 38 exhibits --

16 MR. CALLISTE: Withdrawn.

17 Q. Here on this transcript you

18 indicate that there were Photographs 39

19 through 55. Do you see that there?

20 A. **I still see it.**

21 Q. Were the first 38 items exhibits

22 or were they photographs? Do you know?

23 MR. O'BRIEN: I'm going to

24 object. It's outside the scope of what

25 the judge ordered. You're supposed --

27

1 Collins

2 MR. CALLISTE: I'm asking

3 about --

4 MR. O'BRIEN: You're supposed to

5 be asking about the medical examiner's

6 testimony --

7 MR. CALLISTE: I'm asking --

8 MR. O'BRIEN: -- not the prior

9 exhibits.

10 MR. CALLISTE: I'm asking about

11 the medical examiner's testimony as seen

12 right here in this transcript, right off

13 the transcript that was released by the

14 court.

15 MR. O'BRIEN: The transcript

16 refers to Photographs 39 through 55.

17 You're asking about 1 through 38.

18 MR. CALLISTE: Right. I'm asking

19 the witness if he recalls what

20 Photographs 1 through 38 were.

21 MR. O'BRIEN: They have nothing

22 to do with the ME's testimony.

23 MR. CALLISTE: How do you know

24 that if the witness didn't --

25 MR. O'BRIEN: You have the ME's

28

1 Collins

2 testimony in front of you.

3 MR. CALLISTE: How do you know

4 that if the witness didn't answer?

5 MR. O'BRIEN: You have the

6 testimony --

7 MR. CALLISTE: Counsel, you're

8 kind of taking up my time, so if you

9 will, I'm asking as to whether

10 Photographs 1 through 39 were autopsy

11 photos. I'm getting there, if you can

12 allow me to ask that question.

13 MR. O'BRIEN: I will allow this

14 question: Do you know if 1 through 38

15 were photographs?

16 Is that your question?

17 MR. CALLISTE: Were photographs

18 taken by the medical examiner during

19 this autopsy?

20 MR. O'BRIEN: If you know, John.

21 THE WITNESS: I do not recall. I

22 doubt it.

23 BY MR. CALLISTE:

24 Q. Is there something that would

25 refresh your recollection as to what items 1

29

Collins

1 through 38 were?

A. Sure, the exhibits or the list of exhibits that was part of my file.

RQ MR. CALLISTE: Once again I call for the production of those exhibits or the file that was maintained by the district attorney's office with respect to the presentment of this case.

MR. O'BRIEN: Once again I'm going to refer you to Judge Brown's order. He saw the grand jury minutes. He read the grand jury minutes and released a portion of the grand jury minutes, which is what you have before you right now, and that's it.

MR. CALLISTE: That's fine. If you could just take it under advisement and hold the speaking objections, thank you. It's Federal Rules we're dealing with here.

Q. Sir --

A. I'm listening.

Q. -- do you know if there were more than 55 photographs?

30

Collins

A. I'm looking at page 33, because I was flipping through, and it indicates that there were 14 witnesses and 60-some-odd exhibits, and some of those exhibits had subdivisions, so there may have been as many as a hundred pieces of evidence, according page 33. Do I specifically recall what 1 through 38 were? No.

Q. Based on your recollection, it would be accurate to say that you did not present all the photographs that were contained in the autopsy report; would that be accurate?

A. In the medical examiner's file?

Q. Yes.

A. You said autopsy report.

Q. In the medical examiner's file.

A. That would be fair to say.

Q. Just for clarity, the determination as to what photos would be presented was made by whom?

A. It was a result of my meeting with the medical examiner and her considered expertise as to which photographs would best

31

Collins

help her explain Mr. Lazo's injuries and their significance to the grand jury.

Q. With regard to your presentation of this matter to the grand jury, were you working with anyone that was above you in the chain of command?

MR. MITCHELL: I object to the form of the question.

Q. Within in your office, a supervisor?

A. This was '09?

MR. O'BRIEN: There's an objection from the County.

Can you answer the question?

THE WITNESS: Yeah, I think so.

MR. O'BRIEN: Okay. Go ahead.

A. There were only two people superior to me in the office, and that was chief assistant -- that was the chief assistant and the district attorney.

Q. Who was the chief assistant?

A. I'm trying to remember at the time whether it was Emily Constant or John Buonora. I believe it was Emily Constant.

32

Collins

Q. If it was Ms. Constant, do you recall whether Ms. Constant had any involvement at all with respect to your presentment of this matter to the grand jury?

A. I don't believe she had any.

Q. Was anyone, in other words, supervising you with respect to your presentation of this matter to the grand jury?

A. I answered directly to the district attorney.

Q. Is that Mr. Spota?

A. That would be Mr. Spota.

Q. Did Mr. Spota supervise you directly or indirectly with regard to your presentment of this matter to the grand jury?

MR. MITCHELL: I object to form.

A. Mr. Spota was my boss 24 hours a day.

Q. My question is specifically with respect to this matter, not with respect to his overall supervision of you. Did he supervise you with respect to this particular presentment of this matter to the grand jury?

A. I think that would be a question

33

Collins

1
2 **better addressed to him, whether he thought he**
3 **was supervising me or not. I consulted with**
4 **him. He and I had conversations about many**
5 **things, and mostly the potential involvement**
6 **of the federal authorities. With regard to**
7 **the specific presentation, I don't recall**
8 **having discussions with Mr. Spota about that**
9 **other than the fact I was doing it.**

10 Q. Did Mr. Spota at all ever make
11 any inquiries to you about the evidence that
12 you were presenting to the grand jury?

13 A. **Not that I recall.**

14 Q. Prior to your presentment of this
15 matter to the grand jury, did you meet with
16 the medical examiner?

17 A. **Yes.**

18 Q. On how many occasions?

19 A. **At least once, perhaps twice.**

20 Q. During those meetings did you go
21 over the questions and answers that would be
22 posed to the grand jury?

23 A. **In general terms.**

24 Q. Did you also go over the
25 photographs and the exhibits?

34

Collins

1 A. **As I previously indicated, yes.**

2 Q. Did you go over the autopsy
3 report with the medical examiner --

4 A. **Yes.**

5 Q. -- prior to the grand jury?

6 A. **Yes.**

7 Q. You were familiar with the
8 questions and -- that you were asking and the
9 answers that she would be giving?

10 A. **Relatively. I don't get that**
11 **specific with a witness. We discuss areas of**
12 **inquiry. I don't do Q and A and practice it.**
13 **I don't do that.**

14 Q. Did you discuss with the medical
15 examiner the aspect of the case or aspect of
16 Mr. Lazo's injuries dealing with those nonlife
17 threatening wounds that Mr. Lazo had? Did you
18 discuss that with the medical examiner?

19 A. **I'm sorry, could you say that**
20 **again.**

21 Q. Certainly.
22 Did you have any discussions with
23 the medical examiner regarding the wounds that
24 were visible to Mr. Lazo's body prior to the

25 were visible to Mr. Lazo's body prior to the

35

Collins

1 presentation to the grand jury?

2 A. **Yes, sir.**

3 Q. Did you seek any sort of answers
4 from the medical examiner during your
5 interviews with the medical examiner regarding
6 whether any of those injuries could have
7 contributed to Mr. Lazo's death?

8 A. **Did I ask her those things?**

9 Q. Yes.

10 A. **I don't specifically recall the**
11 **questions that I asked Dr. Milewski in**
12 **preparation for going to the grand jury. I do**
13 **believe that her report would have included in**
14 **it any contributory factors.**

15 Q. My question is: Did you ask the
16 medical examiner in any detail with respect to
17 whether any of those wounds could have
18 contributed to Mr. Lazo's death before the
19 grand jury presentment?

20 A. **I don't specifically remember.**

21 Q. Is that something that you would
22 have asked the medical examiner in a
23 presentment to the grand jury under these
24 circumstances where --

36

Collins

1 A. **If I didn't, it wouldn't be.**

2 Q. It wouldn't be what, sir?

3 A. **If I didn't ask her, it wouldn't**
4 **be something I would ask her, was your**
5 **question.**

6 Q. My question is: Did you ask her?

7 A. **You --**

8 Q. Is that something that you would
9 have asked in a case where the matters are
10 dealing with the death of a person during a
11 grand jury investigation?

12 A. **As I told you earlier, each case**
13 **is different, and the facts are peculiar, and**
14 **if I thought it was prudent and important to**
15 **the grand jury to ask her that, I would have**
16 **asked her that.**

17 Q. Do you have any specific
18 recollection of asking her that?

19 A. **About contributory causes of**
20 **death?**

21 Q. Whether those injuries that were
22 sustained by Mr. Lazo could have contributed
23 to his death, injuries that were --

24 A. **I'm not sure I appreciate the**
25

37

Collins

distinction. I discussed each and every apparent injury with the medical examiner before the grand jury.

Q. Did the district attorney's office conduct their own investigation into this matter before it was presented to the grand jury?

A. I would say no.

Q. Did the district attorney's office ever come to any conclusions as to whether they believed that Mr. Lazo's death was caused by these officers?

MR. MITCHELL: I object to the form.

A. I believe the district attorney's understanding is predicated on the investigation conducted by the police department and the medical examiner --

Q. Right, so --

A. -- and as far as things that may have contributed to the -- Mr. Lazo's death, that would be the medical examiner's bailiwick.

Q. My question to you is: Did the

38

Collins

district attorney's office ever come to any sort of conclusion as to what they believed was the cause of Mr. Lazo's death, whether relying on the medical examiner's reports or the testimony of the officers or anything else?

A. I believe, with regard to the cause of Mr. Lazo's death, the district attorney's office would be reliant on the medical examiner's opinion.

Q. Right.

So my question is: Did the district attorney's office ever come to any conclusions of their own?

MR. O'BRIEN: I object. You've asked and answered that.

MR. CALLISTE: The question wasn't answered.

MR. O'BRIEN: You can answer it, John.

A. I thought I did, but the district attorney's conclusion as to the cause of Mr. Lazo's death would be reliant upon the medical examiner's opinion, which I think you

39

Collins

have sworn under oath both in the grand jury and sworn to under jurat in the autopsy report.

As far as the district attorney himself's conclusion, you would have to ask him.

Q. I asked if the district attorney's office, with respect to this matter that you were presenting to the grand jury, ever came to its own conclusion based on any investigation or any determination that it looked at or reviewed regarding the -- what caused Mr. Lazo's death?

MR. MITCHELL: I object to the form.

MR. O'BRIEN: I object also.

A. The district attorney presented this matter for -- to a grand jury for the grand jury to decide whether or not the officers had any criminal culpability in Mr. Lazo's death. The grand jury made their decision.

Q. My question is not about the grand jury's decision. My question is with

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Collins

respect to --

A. I don't speak for the DA's office.

Q. At the time you were --

A. You want my personal opinion?

Q. No, no.

A. Okay.

Q. At the time you were -- you were the lead on this matter, correct?

A. I was the lead prosecutor, yes.

Q. Right.

Has the district attorney's office ever made any determinations as to whether they believed -- whether they believe the subject of a grand jury presentment is guilty or innocent before?

MR. O'BRIEN: I object to that.

THE WITNESS: Am I answering that?

MR. O'BRIEN: You can answer if you can answer.

A. I don't think I can answer it. I'm not quite sure I understood it.

Q. In this situation did the

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1 Collins

2 district attorney's office, based on your

3 interaction, your employment with them, your

4 presentment of this matter to the grand jury,

5 ever come to its own conclusion as to whether

6 they believed the officers were culpable?

7 **A. Criminally?**

8 **Q. Yes.**

9 **A. The grand jury decided that.**

10 RL **Q. That's great.**

11 My question is with respect to

12 the district attorney's office. Did the

13 district attorney's office ever come to any

14 conclusions of its own.

15 MR. MITCHELL: I object to the

16 form.

17 MR. O'BRIEN: I object again, but

18 we've objected four or five times.

19 **A. The district attorney is required**

20 **by law to abide by the grand jury's decision.**

21 **That's what we did, as far as I know.**

22 MR. CALLISTE: Okay. I don't

23 believe that this witness is answering

24 this question, so can we mark this for a

25 ruling just to allow everyone to know

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1 Collins

2 that I will reserve the right to

3 recall -- to ask for more time on this

4 deposition.

5 MR. O'BRIEN: You know we'll

6 object to that.

7 MR. CALLISTE: I wouldn't expect

8 any less.

9 **Q. Sir, let me ask this way: Did**

10 **the district attorney's office, based on your**

11 **interactions with them and your employment**

12 **with them, ever determine whether Mr. Lazo's**

13 **death was a homicide?**

14 MR. MITCHELL: I object to the

15 form.

16 **A. The medical examiner determined**

17 **that.**

18 **Q. Did the medical examiner**

19 **determine that Mr. Lazo's death was a**

20 **homicide, to your knowledge?**

21 **A. In the medical sense, yes.**

22 **Q. Okay.**

23 Sir, was this autopsy report ever

24 admitted as an exhibit in the grand jury?

25 **A. I don't specifically remember. I**

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1 Collins

2 **don't specifically remember.**

3 **Q. If you can take a look --**

4 **A. But it would have --**

5 **Q. -- at the transcript, maybe that**

6 **will refresh your recollection as to whether**

7 **the actual autopsy report was admitted as an**

8 **exhibit --**

9 **A. I can tell you --**

10 **Q. -- into evidence?**

11 **A. -- that my gut is it wasn't**

12 **because I produced the medical examiner**

13 **herself. However, I don't have all of the**

14 **minutes before me, so I don't know, but it**

15 **would not have ordinarily been my practice to**

16 **produce the report if I had the doctor who**

17 **performed the autopsy, which I had in this**

18 **case.**

19 **Q. Do you not believe or did you not**

20 **believe that the medical examiner's actual**

21 **report would have been important to show to**

22 **the grand jury during this presentation?**

23 MR. MITCHELL: I object to the

24 form.

25 MR. O'BRIEN: You can answer

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1 Collins

2 that, John.

3 **A. I do not believe it is an**

4 **appropriate substitute for the actual**

5 **testimony of the doctor who did the work.**

6 **Q. Did the doctor testify as to**

7 **every aspect of the medical report, of the**

8 **autopsy, if you know?**

9 **A. Every aspect of it, I doubt it.**

10 **Q. It was your conclusion, as the**

11 **person presenting this matter to the grand**

12 **jury, that the report was less important than**

13 **the actual doctor's testimony?**

14 MR. MITCHELL: I object to the

15 form.

16 **Q. Would that be accurate?**

17 **A. It was my opinion, as the legal**

18 **advisor to the grand jury, under my statutory**

19 **obligations under Article 190, that producing**

20 **the doctor who was fully informed on all**

21 **aspects of the autopsy before the grand jury**

22 **was preferable to producing simply the report,**

23 **because the grand jury would then have the**

24 **opportunity to ask questions of the doctor**

25 **where they could not do that with a report.**

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Collins

Q. If the grand jury had the report while the doctor -- if the grand jury did have the report, the grand jury would have had the opportunity to call the doctor if they so chose, correct --

A. The grand jury --

Q. -- or recall the doctor, one or the other?

A. I'm sorry.

The grand jury could have called any witness they wanted. I called the medical examiner, but I'm sure if I hadn't they may have wanted to hear from her.

Q. Just to be clear, it was your determination alone to not include the autopsy report in the grand jury or include it as an exhibit for the grand jury?

A. First of all, under the rules of evidence it's generally thought to be inappropriate to produce both the report and the author, at least in my experience in State Court, and I think the better alternative -- don't look at me like that, please, please. And I thought it preferable to produce the

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doctor than produce papers that could not be questioned.

Q. It's your testimony that the rules of evidence does not allow the doctor and the doctor's report?

A. It's my testimony that my understanding is that sometimes that's inappropriate.

Q. In this situation, where this matter was being presented to the grand jury, did you believe that it was inappropriate based on the rules of evidence?

A. I thought it was better to do it the way I did it for the grand jury's purposes.

Q. Again, so it was your decision not to put that autopsy in?

A. If I didn't, it was my decision.

Q. Sir, directing your attention to page 15 of Collins A.

A. I'm there.

Q. Directing your attention to page 15, line 10.

A. Yes, sir. 15, line 10 appears to

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Collins

be an answer.

Q. Right. This --

A. Actually a continued answer.

Q. Right.

In this aspect of the grand jury presentation you're asking about a wound to Mr. Lazo that appeared to be a bite. Do you see that there?

A. Not in line 10. Where? I'm sorry, okay, the following question, line 12 through 14.

Q. Right.

A. It says bit, but I presume it means bite. I did -- I did ask the doctor whether a particular bruise in Photograph 42 was consistent with a bite, although it says bit. The doctor follows up with bite, so I presume I said bite also.

Q. Do you recall actually making that specific inquiry to the medical examiner?

A. No.

Q. At any time prior to your presentation of this matter to the grand jury did you discuss with the medical examiner

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Collins

whether there were wounds on Mr. Lazo's buttock or anywhere else on his body that were consistent with a bite wound?

A. I'm sure I did.

Q. Based on your recollection of your discussions with the medical examiner, do you know if the medical examiner made any conclusions as to whether Mr. Lazo was indeed bit or bitten?

MR. MITCHELL: I object to the form.

MR. O'BRIEN: If you know, John.

A. In the following page the doctor says that it could be consistent with a bite, but I think that's as far as a doctor can go anyways.

Q. When you say "that's as far as a doctor can go," what do you mean by that?

A. When a doctor describes a wound as consistent with a particular instrumentality, unless there is an absolute way to match it up with that instrumentality, the testimony usually goes as quote/unquote consistent with.

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Collins

1
2 **Q.** At any time prior to your
3 presentation of this matter to the grand jury,
4 did you ask the medical examiner questions as
5 to whether the medical examiner believed that
6 Mr. Lazo was bit -- bitten?

7 **A.** **I'm sure that we discussed prior**
8 **to the grand jury presentation a wound or**
9 **wounds that looked like or could have been**
10 **bite marks based either on my experience or**
11 **hers.**

12 **Q.** At any time prior to, during or
13 after the presentment of this matter to the
14 grand jury, did you do any follow-up with
15 respect to whether Mr. Lazo was indeed bit?

16 **A.** **Did I do follow-up? No.**

17 **Q.** Yes.

18 Did you ask the medical examiner
19 to do any sort of further examination into
20 whether Mr. Lazo was bit or bitten on any part
21 of his body?

22 **A.** **I did not.**

23 **Q.** Did you believe that a potential
24 bite wound on Mr. Lazo's body would have been
25 important or an important matter to

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Collins

1 investigate during a grand jury presentment?

2 **A.** **Yes.**

3 **Q.** Is there any reason why you
4 didn't follow up with that?

5 **A.** **Yes.**

6 **Q.** What would that reason be, sir?

7 **A.** **It's my recollection that one of**
8 **the officers testified to biting him.**

9 **Q.** Which officer was that, sir?

10 **A.** **I don't remember.**

11 **Q.** Did you believe that there were
12 any -- did you have any concerns with the fact
13 that an officer claimed to have bitten
14 somebody?

15 **A.** **Did I have concerns?**

16 **Q.** Yes, as the person presenting
17 this matter to the grand jury.

18 MR. MITCHELL: Objection to form.

19 MR. O'BRIEN: If you can answer.

20 **A.** **I was concerned about everything**
21 **in this case, and, actually, if you look at**
22 **line 21 on page 15 the medical examiner**
23 **describes it as a bite.**

24 **Q.** The medical examiner in this

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Collins

1 situation concluded that it was a bite?

2 **A.** **I don't know what the operation**
3 **of her mind was, but I can tell you there is**
4 **sort of a small, puffy purple from the bite**
5 **itself in her testimony on line 21.**

6 **Q.** The fact that Mr. Lazo was --
7 there was a bite wound on him and the officer
8 actually admitted to biting Mr. Lazo --

9 **A.** **I said I believe that to have**
10 **been the case in the grand jury.**

11 **Q.** Do you have any specific
12 recollection of an officer claiming that he
13 bit Mr. Lazo?

14 **A.** **I have a recollection of one of**
15 **the officers claiming or thinking he had bit**
16 **Mr. Lazo, the decedent.**

17 **Q.** Did you believe that that action
18 by the police officer in this situation where
19 Mr. Lazo was also being hit with other objects
20 was significant during the grand jury
21 presentation --

22 MR. MITCHELL: Objection to form.

23 **Q.** -- or during your investigation?

24 MR. O'BRIEN: You can answer,
25

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Collins

1 John.

2 **A.** **I thought that was significant.**

3 **Q.** Did you, as the assistant
4 district attorney in this matter -- and at
5 that time you were -- you had supervisory
6 authority, correct?

7 **A.** **I did. Not over the police**
8 **department or ME, but, yes, I did.**

9 **Q.** You had supervisory authority
10 over other assistant district attorneys,
11 correct?

12 **A.** **I did.**

13 **Q.** And over investigators in the
14 district attorney's office as well, correct?

15 **A.** **I did.**

16 **Q.** Did you ever ask anyone to
17 inquire further or to follow up on that aspect
18 of the incident?

19 **A.** **No.**

20 **Q.** Based on your recollection of the
21 medical examiner's testimony and report, do
22 you know if there were any injuries to
23 Mr. Lazo below the skin level?

24 **A.** **I believe there were.**
25

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Collins

Q. Do you recall, as you sit here today, what those injuries were?

A. I believe that some of the bruises may have had hemorrhaging beneath the skin level. I believe there were some lacerations or abrasions that broke the skin surface. That's my answer.

Q. Do you know if the -- if there were any injuries to Mr. Lazo's bones?

A. I believe I recall there were no fractures.

Q. Do you know there were any injuries to Mr. Lazo's organs?

A. Other than the part that you just had me read of the medical examiner's testimony with regard to there being no major life -- sorry, no life-threatening injuries to the major organs, that's what I recall.

Q. Regardless of whether the injuries were life threatening or not, do you recall if there were any injuries to the organs?

A. Not specifically.

Q. Taking a look at the autopsy

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Collins

report that's been previously marked as Collins B --

A. I didn't see that before. Do you want me to look at it now?

Q. Yes, please.

A. Okay, I have it.

Q. Do you know if the medical examiner made any determinations as to whether there were injuries to Mr. Lazo's organs?

A. Do you want me to go through the whole report.

Q. If you will?

A. Okay.

In reviewing the report, I do not see any injuries to any organs reported.

Q. At any time did you -- at any time did you ever ask the medical examiner to go back and take a closer look at the evidence?

A. I'm sure I asked the medical examiner to go back and look at the photographs preparatory to our meeting, and, of course, I reviewed the report with her when I met. I do not think I recall -- I don't

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Collins

think I asked her to do any further examination after we met.

Q. What --

A. I don't --

I'm sorry, I didn't mean to cut you off.

I don't think we met until October.

Q. The first time you met the medical examiner, in other words, was sometime after the autopsy had been completed, a couple months after?

A. Correct. I was only assigned to the case after the autopsy was completed and the report issued.

Q. Very well.

Do you know if anyone in the district attorney's office was monitoring that case prior to you being --

A. Prior --

Q. -- involved in it?

A. I'm sorry. I cut you off again.

Q. It's okay.

A. Prior to my involvement?

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Collins

Q. Yes.

A. This was '08?

Q. Yes.

A. Prior to my involvement Homicide Bureau Chief Janet Albertson was assigned to the case, Assistant DA Merrifield had received the call when the incident was reported to the homicide squad. Ms. Albertson took the case over immediately after Ms. Merrifield reported in to her, and I think I took over the case because Ms. Albertson was otherwise occupied sometime late June/early July of '08, so, yes. The short answer is yes, other people were involved before me.

Q. That was Ms. Albertson?

A. Albertson.

Q. What is Ms. Albertson's title --

A. I believe at the time --

Q. -- or was at the time?

A. -- it was homicide bureau chief.

Q. Directing your attention to

page 20 of the minutes.

A. I'm there.

Q. Starting from line 5 through

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Collins

line 13, if you could just review that and let me know when you're done.

A. Did you say through 19, sir?

Q. 5 through 13.

A. 13. I'm done.

Q. In these questions here you asked the doctor whether she dissected the chest area to see what was beneath that area of injury.

A. Um-hmm.

MR. O'BRIEN: Answer that question, John --

A. I'm sorry, yes, I did.

MR. O'BRIEN: -- for the reporter.

THE WITNESS: I apologize.

Q. Here the medical examiner gives the answer that they -- that she -- in sum and substance that she peeled off the skin and the soft tissue of the skeleton and there was no fractured ribs in that area. Do you see that?

A. I do.

Q. Besides the medical examiner speaking to fractured ribs in the area, the

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Collins

medical examiner gave no indication as to whether she reviewed any organs or any areas of the body beneath the ribs. Do you see that there?

A. In that set of questions, that's accurate.

Q. Well, do you know if the medical examiner ever gave any testimony during this grand jury presentment as to whether she reviewed areas below the ribs?

A. I'm sorry, below the ribs.

Q. Yes, underneath the ribs within the rib cage cavity?

A. I believe that would be encompassed by her discussion of major organs.

Q. Okay.

Well, here when the medical examiner indicated that there was no fractured ribs in that area, did you -- do you see yourself asking any follow-ups as to any injuries below the ribs?

A. On that page, at those lines, no.

Q. Do you recall ever asking the medical examiner whether there were any

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Collins

injuries to the organs beneath the ribs or within the rib cage?

A. I thought she talked about the major organs in a spot prior to this testimony on page 20.

Q. Well, is it your recollection that the autopsy dealt with life-threatening wounds as opposed to -- or life-threatening injuries as opposed to any other injury?

A. No. The autopsy report deals with everything.

Q. Do you see anywhere in the autopsy report where there is an indication that the organs were checked for nonlife-threatening injuries?

A. I don't see that on this page.

Q. Not on this page. In the autopsy report.

MR. O'BRIEN: I don't know if his question --

A. I'm sorry, are you asking about the report or the minutes?

Q. I'm asking you based on your presentment of this matter to the grand jury

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Collins

whether this medical examiner was ever asked about nonlife-threatening injuries to the organs within the rib cage?

MR. O'BRIEN: I object to form.

If you can answer it, John, answer it.

A. I don't recall. Do you want me to read all her testimony?

Q. Well, if the clock stops, then sure, but if the clock doesn't stop then I will continue asking questions.

A. I'm sorry, I'm not in charge of the clock. I don't know what the restrictions were that were placed on the record by Magistrate Brown. They're not in the electronic order.

Q. Well, do you recall the medical examiner testifying to any injuries that were not life threatening?

A. Yes.

Q. What injuries specifically do you recall the medical examiner testifying to regarding nonlife-threatening injuries?

A. All of them. Every injury she

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1 Collins

2 **described she described as nonlife**
3 **threatening.**

4 Q. My question is --

5 A. **And he had many injuries.**

6 Q. With respect to the organs --

7 A. **Um-hmm.**

8 Q. -- is the question I was asking.

9 At that time I was focussing on the organs or
10 the areas within the rib cage.

11 A. **Is that a question?**

12 Q. Yes. Well, that's -- my previous
13 question was: Do you recall the medical
14 examiner testifying as to injuries to the
15 organs?

16 A. **"Following your examination of**
17 **Mr. Lazo externally, did you then progress to**
18 **the internal examination of his organs and the**
19 **underlying area of external injuries that you**
20 **noted," page 10 --**

21 Q. Reading page 10 --

22 A. -- line 16, following.

23 **"Yes, I did. With the exception**
24 **of bruises of the scalp which were identified**
25 **by dissecting the scalp of his head, there**

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1 Collins

2 **were no internal components to an external**
3 **injury.**

4 **"What do you mean by that?"**

5 Line 23, "The injuries were
6 limited to the external aspect of the body.
7 No internal organ injury, no significant area
8 of major hemorrhage or blood loss," was the
9 doctor's answer.

10 I guess you didn't prepare that
11 question. I see you smiling.

12 Q. I'm just making -- well, I'm just
13 making sure that we're on the same --

14 A. **Did I read something incorrectly?**

15 Q. No, not at all.

16 A. **Okay.**

17 Q. That was for my own edification,
18 if you will.

19 A. **I didn't think you needed me to**
20 **read for you.**

21 Q. Did not.

22 When you examined the autopsy
23 report wherein the conclusion with respect to
24 injury was sudden cardiac death, did it ever
25 occur to you to ask personally how any of

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1 Collins

2 those injuries to Mr. Lazo could have
3 contributed to his death?

4 MR. MITCHELL: I object to form.

5 MR. O'BRIEN: I object also, but
6 if you can answer, John.

7 A. **Yeah. I asked the medical**
8 **examiner about all of the injuries and whether**
9 **they had any effect on Mr. Lazo's death, and**
10 **her opinion was no.**

11 Q. The conclusion, the sudden
12 cardiac death, is that something that you have
13 ever heard of before? Were you familiar with
14 that?

15 MR. MITCHELL: I object to the
16 form.

17 MR. O'BRIEN: You can answer.

18 A. **Yeah, I'm sure I've seen it**
19 **before.**

20 Q. Right, and would it also be
21 accurate to say that the medical examiner also
22 concluded that -- among other things, that
23 Mr. Lazo had no illnesses or injuries in his
24 organs that would have contributed to his
25 death either? Do you recall that?

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1 Collins

2 A. **I thought -- I thought I saw some**
3 **signs of natural disease in some of the**
4 **microscopic examination, but, again, none of**
5 **that, as far as I know, caused Mr. Lazo's**
6 **death. His liver was vascularly congested.**
7 **He had some hypertrophy in his heart. I'm not**
8 **going to read the report to you, but there was**
9 **evidence of illness or deterioration in some**
10 **of his organs.**

11 Q. Do you know if the medical
12 examiner concluded that any of those illnesses
13 or deterioration of organs contributed to his
14 death on that date that he was in the presence
15 of the police?

16 A. **I don't know.**

17 Q. Directing your attention to
18 page 24 of the minutes.

19 A. **I'm there.**

20 Q. Starting from line 19 to I guess
21 the end, 25 --

22 A. **Okay.**

23 Q. -- and continuing on to page 25.

24 A. **Would you start from line 14**
25 **where I define the opinion?**

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Collins

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2 Q. Well --

3 A. **Line 19, "Would you please tell
4 me what that opinion was and explain it."**5 **That's where you want me to start?**6 Q. I'm asking you to -- whatever
7 allows you to place the question in the
8 context, you can start from that line. If 14
9 is better to you...10 A. **Well, I don't know what the
11 question is yet.**12 Q. I'm asking you to review, well,
13 then from line 14 to 25.14 A. **The answer continues into
15 page 25. Do you want me to keep going?**16 Q. Well, did you review lines 14 to
17 25?18 A. **I did.**

19 Q. Within --

20 A. **Do you want me to finish reading
21 what continues on to page 25 or not?**

22 Q. You can.

23 Here the doctor --

24 A. **I've gone as far as line 4 on 25.**

25 Q. Here the doctor indicates that

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Collins

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2 there are -- the absence of any significant
3 internal injuries to explain his death and in
4 the absence of any life threatening diseases
5 that would affect his internal organs.6 A. **I see that.**7 Q. Here the doctor finds that there
8 were no illnesses that Mr. Lazo -- preexisting
9 illnesses that Mr. Lazo had that she could
10 determine contributed to his death that day;
11 would that be accurate?12 A. **No. What it says is in the
13 absence of any major life threatening diseases
14 that would effect his internal organs.**

15 Q. Is that --

16 A. **That's my answer.**17 Q. Is it your conclusion that
18 Mr. Lazo had any preexisting injuries or
19 illnesses that contributed to his death that
20 day?21 A. **It's my opinion that he had some
22 preexisting conditions. I don't have an
23 opinion as to his cause of death.**24 Q. Not your opinion. I'm asking
25 as -- I'm asking whether you know whether it

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Collins

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2 was ever determined as to whether Mr. Lazo had
3 any preexisting conditions that contributed to
4 his death?

5 MR. MITCHELL: I object to form.

6 MR. O'BRIEN: I object also.

7 Can you answer it?

8 A. **Yeah, the ME does it right here
9 on page 24 and 25.**

10 Q. Um-hmm.

11 A. **She continues through page --**12 Q. What preexisting conditions does
13 the ME point out?14 A. **I didn't say she pointed out any.
15 I'm saying the autopsy report points out that
16 he had some preexisting conditions, which was
17 an answer to your previous question, whether
18 he had any illnesses.**

19 Q. Right.

20 Did the medical examiner in her
21 testimony for the grand jury advise the grand
22 jury as to whether any preexisting injuries
23 that Mr. Lazo may have had contributed to his
24 death?25 A. **I believe she did not, other than**

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Collins

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2 **his morbid obesity and whatever else.**3 Q. Did you see the medical examiner
4 stating that the morbid -- or that Mr. Lazo's
5 morbid obesity contributed to his death? Do
6 you see anywhere where the medical examiner
7 has testified to that?8 A. **Say again.**9 Q. Do you see anywhere where the
10 medical examiner may have indicated or
11 testified that Mr. Lazo's morbid obesity was a
12 contributing factor to his death?13 A. **I believe she describes him
14 earlier as obese. Page 28, he had --
15 "Question," line 3, "he had no significant
16 life threatening disease that affected his
17 heart?"**18 **"Answer: No.**19 **"Question: He was five-six and
20 238 pounds?"**21 **"Answer: Yes, and that put him
22 highly or morbidly obese. I think also he was
23 at risk being in intensive exertion
24 physically, so to me that was significant."**25 **That's the medical examiner's**

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Collins

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2 **testimony.**

3 **Q.** During medical examiner's
4 testimony, whether it be before a grand jury
5 or petit jury, is the medical examiner allowed
6 to opine with respect to items or issues that
7 are not in the report?

8 MR. MITCHELL: I object to form.

9 **Q.** To give her own opinion?

10 **A.** **If it's within the realm of her**
11 **expertise, it could be permitted.**

12 **Q.** Okay.

13 Well, on page 25 of the minutes
14 starting at line 22 --

15 **A.** **Okay.**

16 **Q.** -- you ask: "Question: How does
17 the body, Dr. Milewski, handle stress
18 altercations, like what's going on in the body
19 chemically?"

20 Do you see that there?

21 **A.** **I do.**

22 **Q.** There you ask the doctor to
23 explain how the body handles stress. Would
24 that be accurate?

25 **A.** **In a medical sense, yes.**

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Collins

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2 **Q.** Why did you do that? Why did you
3 ask that question?

4 **A.** **Because she's talking in the**
5 **previous answer about stress and exertion.**

6 **Q.** Okay.

7 Where, if anywhere, in Mr. Lazo's
8 autopsy report does the doctor make any
9 reference to stress?

10 **A.** **I don't know. I don't know if**
11 **it's in there or not.**

12 **Q.** Well, sir, can you check it?
13 It's right before you, Lazo B.

14 **A.** **Do you want me to read the whole**
15 **autopsy report again?**

16 **Q.** Well, you just did. Do you see
17 anything there with reference --

18 **A.** **I don't recall seeing the word**
19 **stress in there, but I'm going to look again.**
20 **Other than the reference to quote/unquote,**
21 **Following exertion associated with prolonged**
22 **physical altercation, I do not see any**
23 **particular reference to stress.**

24 **Q.** So my question particularly is:
25 Here where you ask the doctor how the body

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Collins

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2 handles stress, what was your basis for asking
3 that question?

4 **A.** **The previous answer.**

5 **Q.** Which is what?

6 **A.** **Do you want me to read all 14**
7 **lines?**

8 **Q.** No. Which aspect of that answer
9 caused you to ask that?

10 **A.** **The witness begins talking about**
11 **EKG tracing, cardiac death and exertion**
12 **associated with physical altercation. To me**
13 **that sounds stressful.**

14 **Q.** Well --

15 **A.** **And I asked the doctor in**
16 **layman's terms the effect that a stressful**
17 **altercation could have on one's body.**

18 **Q.** Then --

19 **A.** **Then she continued onto describe**
20 **the fight-or-flight syndrome for a full page.**

21 **Q.** Do you see anywhere in the
22 medical report where the doctor mentions any
23 of this to which she testified to on page 26,
24 fight or flight, stress, any of that in
25 response to the questions you ask her?

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Collins

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2 **A.** **I don't believe, other than what**
3 **I said, "Following exertion associated with**
4 **prolonged physical altercation." There may be**
5 **toxicological findings in there that I don't**
6 **understand or didn't ask about. I think that**
7 **question would be better directed to the**
8 **medical examiner with the expertise. My**
9 **effort was to present the medical examiner's**
10 **findings to the grand jury.**

11 **Q.** Right, and if it was your -- if
12 that's what you were trying to do, that is
13 present the medical examiner's findings,
14 then -- and the medical examiner didn't
15 mention anything about stress in her
16 findings --

17 **A.** **Um-hmm.**

18 **Q.** -- then what was the basis of
19 that question?

20 MR. O'BRIEN: It's been asked and
21 answered. You can answer again --

22 MR. CALLISTE: Withdrawn.

23 **Q.** Were you asking the medical
24 examiner to speculate?

25 **A.** **No, I certainly don't think so.**

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Collins

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2 **Q.** Do you believe that this question
3 about how the body handles stress, given the
4 autopsy report where nothing related to stress
5 was specifically mentioned, was speculative?

6 **MR. MITCHELL:** I object to the
7 form.

8 **A.** **No, I don't believe anything that**
9 **the medical examiner said was speculative.**

10 **Q.** Well, not what the medical
11 examiner said but what you asked the medical
12 examiner to give an opinion about regarding
13 stress?

14 **MR. MITCHELL:** I object to the
15 form.

16 **A.** **I'm sorry, I don't understand**
17 **that question.**

18 **Q.** This answer that the medical
19 examiner gives here on page 26, do you see
20 that there?

21 **A.** **I see a full page of answer on**
22 **page 26 that starts on page 25 --**

23 **Q.** Right.

24 **A.** -- Yes.

25 **Q.** Can you agree with me that none

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Collins

1 of this or nothing that the medical examiner
2 has testified to here on page 26 was ever made
3 part of this medical report or the autopsy?

4 **A.** **No, because a lot of the things**
5 **the medical examiner is talking about in here,**
6 **some of the things are negatives.**

7 **Q.** So show me where, if at all, the
8 medical examiner makes reference in the report
9 to --

10 **A.** **I already did that, and I already**
11 **told you that with regard to that what I find**
12 **is on page 1 in the cause of death. I do not**
13 **see the word stress in the body of the report**
14 **itself.**

15 **Q.** Was this doctor ever qualified as
16 an expert?

17 **A.** **I believe so.**

18 **Q.** Can you show me where?

19 **A.** **Page 6 and 7.**

20 **Q.** Now, here the doctor gives
21 testimony regarding her experience --

22 **A.** **That's correct.**

23 **Q.** -- right?

24 **A.** **Yes, sir.**

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Collins

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2 **Q.** My question is: Was this doctor
3 ever qualified as an expert before this grand
4 jury? Was the grand jury ever told that the
5 doctor was an expert?

6 **A.** **That would be inappropriate. The**
7 **grand jury decides if someone was an expert.**
8 **What she did was list her qualifications and**
9 **experience, and that's all that's necessary.**

10 **Q.** Okay.

11 **A.** **It's actually, I believe,**
12 **inappropriate for the court to define someone**
13 **as an expert. Although courts do it, I think**
14 **it's inappropriate. It should be up to the**
15 **jury to decide whether someone is an expert or**
16 **not.**

17 **Q.** That's your personal opinion,
18 right?

19 **A.** **That's my personal and legal**
20 **opinion.**

21 **Q.** The rules do allow the
22 designation of an expert by the judge,
23 correct?

24 **A.** **The rules do allow that someone**
25 **can be recognized as an expert. Usually it's**

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Collins

1 **by stipulation.**

2 **Q.** My question with regard to the
3 doctor's response on page 26 is --

4 **A.** **Which one?**

5 **Q.** On page 26 of the minutes.

6 **A.** **Okay.**

7 **Q.** This doctor goes into a very
8 speculative account as to what could happen in
9 the body. Do you see that there?

10 **MR. MITCHELL:** Object to form.

11 **MR. O'BRIEN:** I object.

12 **Q.** During times of stress. Do you
13 see that?

14 **A.** **I see that the doctor gives her**
15 **opinion and experience with regard to the**
16 **physiology of someone under the stress that**
17 **Mr. Lazo was under.**

18 **Q.** Did this doctor ever come to any
19 conclusion that Mr. Lazo did actually
20 experience what she testified to here on page
21 26?

22 **A.** **I don't know.**

23 **Q.** Did you ever see that before from
24 this doctor?
25

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1 Collins

2 **A. I don't understand.**3 **Q.** Did you ever see this doctor
4 concluding that Mr. Lazo, for example,
5 experienced anything that the doctor testified
6 to here on page 26?7 **A. I'm sorry?**8 MR. O'BRIEN: I object to the
9 form.10 **Q.** In the doctor's autopsy report or
11 at any time prior to her testifying to this in
12 the grand jury, do you see anything written
13 down by the doctor that Mr. Lazo, the person
14 who died in this situation, actually
15 experienced what it is that she testified to
16 on page 26?17 **A. The only way to do that, as far**
18 **as I'm able to determine, would have been to**
19 **have had that discussion with Mr. Lazo**
20 **himself, and the doctor did not have that**
21 **advantage.**22 **Q.** My question is whether you've
23 ever seen the doctor come to these
24 conclusions, as she testified on page 26 in
25 writing or in any other way, prior to her

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1 Collins

2 testifying to this in the grand jury?

3 **A. I don't understand the question.**4 **Q.** These things that the doctor
5 testifies to on page 26, did you ever see the
6 doctor put that in writing anywhere, that
7 Mr. Lazo did actually experience any of these
8 things that she testified to for a whole page
9 and a half?10 **A. The answer to that is no.**11 **Q.** Directing your attention to
12 page 27, starting from line 10.13 **A. I'm there.**14 **Q.** You asked the question, "Mr. Lazo
15 found himself at the precinct and charged with
16 two class B felonies following this
17 altercation. Is it possible that Mr. Lazo's
18 stress level and his acute stress response
19 continued beyond the time frame of the actual
20 physical altercation?"

21 Do you see that there?

22 **A. I do.**23 **Q.** Why did you ask that question?24 **A. Because when the doctor referred**
25 **to stress and exertion, my layman's**

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1 Collins

2 **understanding of what she was describing**
3 **indicated to me that the stress was not yet**
4 **over when the altercation ended, and I asked**
5 **her if she had an opinion and experience with**
6 **regard to the continuing stress that the**
7 **defendant or decedent might have seen himself**
8 **under following the altercation.**9 **Q.** Do you see any evidence that
10 Mr. Lazo ever experienced stress as a result
11 of being charged with class B felonies? Did
12 you ever see that anywhere?13 **A. I don't understand.**14 **Q.** Did you ever learn from any of
15 the officers or from anyone in the police
16 precinct or anyone who treated Mr. Lazo that
17 Mr. Lazo experienced any sort of stress as a
18 result of being charged with two felonies as
19 opposed to being beaten in the street by
20 police?

21 MR. MITCHELL: I object.

22 MR. O'BRIEN: I object to the
23 form.24 **Q.** Or in addition to --

25 MR. O'BRIEN: Can you answer it.

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1 Collins

2 **Q.** Or in addition to being in an
3 altercation with police in the street?4 **A. Why don't we clarify what the**
5 **question is. Everybody was talking. I'm**
6 **sorry.**7 **Q.** Certainly.

8 Here on page 27 you ask --

9 **A. Yup.**10 **Q.** -- "Question:" -- you ask the
11 doctor to --12 **A. What I asked the doctor was, "Is**
13 **it possible that Mr. Lazo's stress level and**
14 **his acute stress response continued beyond the**
15 **time frame of the actual physical**
16 **altercation," and then the doctor answered in**
17 **her expert opinion.**18 **Q.** Well, here you preface that
19 question with, "Mr. Lazo found himself at the
20 precinct and charged with two class B felonies
21 following this altercation."

22 Do you see that there?

23 **A. Um-hmm. It had been previously**
24 **testified to that Mr. Lazo was under arrest**
25 **for those charges by previous witnesses.**

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Collins

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2 **Q.** Right, so where, if -- did any
3 witness testify that Mr. Lazo exhibited any
4 port of stress after learning he was being
5 charged with class B felonies?

6 **A.** **Not that I recall specifically.**

7 **Q.** Here do you know if the doctor,
8 this medical examiner, was present in the
9 precinct when Mr. Lazo was arrested?

10 **A.** **I know that she wasn't.**

11 **Q.** So how would the doctor know if
12 Mr. Lazo experienced stress as a result of
13 being charged with two felonies?

14 **A.** **The question was and -- actually,
15 the first part of that question is a
16 statement, and then the question was, Is it
17 possible that his stress level and
18 physiological stress response would continue
19 even though the quote/unquote fight was over?**

20 **Q.** So the first part of this
21 question, you were testifying yourself?

22 **A.** **No, that's not true.**

23 **Q.** In this situation, were you
24 asking --

25 **A.** **It's my informing the witness of**

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Collins

1 **previous testimony, which is not testifying.**

2 **Q.** Here you're asking the witness to
3 speculate as to whether those B felonies
4 contributed to stress that Mr. Lazo was
5 experiencing; is that --

6 **A.** **Not --**

7 **Q.** -- would that be accurate?

8 **A.** **Not true.**

9 **Q.** The answer that the witness gave
10 to your question, did you take a look at that
11 or could you to look at that if you have not?

12 **A.** **Sure. I have.**

13 **Q.** The response that that witness
14 gave, was it speculative?

15 **A.** **I don't think so.**

16 **Q.** Here did you ask the witness to
17 speculate as to how felonies could have caused
18 or --

19 **A.** **No, sir.**

20 **Q.** -- or contributed to his death?

21 **A.** **No, sir.**

22 MR. MITCHELL: I object.

23 **Q.** Was there ever anything in the
24 doctor's report or reports which concludes
25

Collins

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2 that the charges that Mr. Lazo was g.
3 caused and/or contributed to his death.

4 **A.** **No, not specifically.**

5 **Q.** On the autopsy report, Collins

6 B --

7 **A.** **Yes.**

8 **Q.** -- under final anatomic diagnoses
9 on the first page of that document the medical
10 examiner points to at least six items here --

11 **A.** **Correct.**

12 **Q.** -- which the medical examiner
13 believes contributed to the death. Do you see
14 that?

15 **A.** **I don't know that those
16 necessarily contributed to the death. That's
17 the final anatomic diagnoses. The cause of
18 death is listed below.**

19 **Q.** "Sudden cardiac death following
20 exertion with prolonged physical altercation
21 with multiple blunt impacts."

22 **A.** **That's what it says.**

23 **Q.** Do you see anything there in that
24 cause of death related to stress?

25 **A.** **Again, no.**

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Collins

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2 **Q.** Sir, but you do see things there
3 related to multiple blunt impacts. Do you see
4 that?

5 **A.** **I sure do.**

6 **Q.** Right, and with respect to the
7 final anatomic diagnoses above that area
8 described as cause of death, there are several
9 numbers there wherein blunt -- multiple blunt
10 impacts are mentioned. Would that be
11 accurate?

12 **A.** **In III, IV and V and also I, yes.**

13 **Q.** Would it be accurate to say that,
14 at least in the report, the medical examiner
15 describes that the multiple blunt impacts was
16 a contributing factor to Mr. Lazo's death?

17 MR. O'BRIEN: Objection.

18 You can answer.

19 **A.** **Multiple blunt impacts is listed
20 as part of the cause of death.**

21 **Q.** Right, when you took a look at
22 this medical examiner autopsy report for the
23 first time, did you understand that the
24 medical examiner indicated that multiple blunt
25 impacts contributed to the cause of death?

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Collins

MR. MITCHELL: Objection to form.

MR. O'BRIEN: Objection.

Q. Was that your understanding?

A. **My understanding is multiple blunt impacts was included in the cause of death.**

Q. As one of the factors that caused the death, correct?

MR. O'BRIEN: Objection.

A. **My answer is what it was.**

Q. Well, I'm asking what your understanding is.

A. **My answer is: In the cause of death, multiple blunt impacts is listed and referred to.**

Q. Okay.

Directing your attention to page 28 of the minutes.

A. **I'm there.**

Q. Starting from line 10 you begin to ask the medical examiner about the blunt impact traumas. Do you see that there?

A. **Um-hmm. I don't know that I begin there, but that's that question. I may**

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Collins

have discussed blunt trauma injuries before that.

Q. Right. You asked all throughout this presentment, correct, all throughout her testimony; would that be correct?

A. **What's the question?**

Q. You asked her about the blunt impact traumas all throughout her testimony?

A. **Many times.**

Q. Here you ask, starting on line 10, "Question: With regard to the blunt impact trauma observed by you, is it fair to say that none of these blunt impact traumas were life threatening."

Do you see that there?

A. **I do.**

Q. She indicates that none of them were?

A. **She does.**

Q. Then going to line 14, you ask, "Either taken by themselves or all together?"

Do you see that there?

A. **I do.**

Q. And she agrees with you, "That's

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Collins

1 right."

A. **She didn't agree with me. That's her testimony, because I asked her in the alternative.**

Q. She says, "That's right," correct?

A. **Yeah, but that's not agreeing with me.**

Q. She says, "That's right," does she not?

A. **She says, "That's right." That's her opinion. She answered the question. She didn't agree with me.**

Q. In going down -- whether she agreed with you or not, that speaks for itself, but going down to line 18 --

MR. O'BRIEN: If that's a question, I object.

Q. Going down to line 18, the question is: "Taken alone or combined, they were not of the severity that caused Mr. Lazo's death?"

Do you see that there?

A. **I do.**

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Collins

Q. She says, "That's correct"?

A. **She does.**

Q. Did you believe that testimony to be consistent with the autopsy report?

MR. MITCHELL: Objection to form.

MR. O'BRIEN: Objection.

If you can, answer it, John.

A. **Yes.**

Q. With respect to the autopsy report, did you ever ask her any questions as to how -- as to whether the blunt impacts contributed to his death?

A. **Did I ask her that specific question when?**

Q. Well, let's say in these scopes -- within this scope of questioning here on page 28.

A. **I do not see the word contributory or contributed.**

Q. Is there any reason why you did not delve or ask questions as to how those injuries could have contributed to his death in addition to the questions about stress and other things --

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Collins

A. I believe I did.**Q.** -- that you asked -- in addition

to the questions about stress and other things
that you asked the medical examiner to
speculate about?

MR. MITCHELL: Objection to form.

MR. O'BRIEN: Objection and asked
and answered also.

THE WITNESS: Am I answering
that?

MR. O'BRIEN: If you can.

THE WITNESS: I can't.

Q. The multiple blunt impacts that
were sustained by Mr. Lazo actually did
contribute to his cause of death, did it not?

A. I don't know.

MR. O'BRIEN: Objection.

Q. As per the medical report, you
have that in front of you, don't you, sir?

A. I have that report.

Q. Was it your understanding that
the medical report was indicating that
multiple blunt impacts contributed to his
death?

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Collins

MR. MITCHELL: Objection.

A. The report says what it says.

Q. What is your understanding as to
what the report says with respect to blunt
impacts?

MR. MITCHELL: Object to the
form.

**A. I don't think my understanding of
it is relevant.**

Q. Sir, could you answer my
question, please?

MR. O'BRIEN: Objection. He
answered your question.

MR. CALLISTE: Whether he thinks
it's relevant is not a basis to not
answer a question.

A. You want to know what I think?

Q. Based on -- you presented this
matter to the grand jury, correct?

A. I did.

Q. You had to have an understanding
of the documents and the testimony that you
were presenting to the grand jury, did you
not?

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Collins

**A. To the extent that I could, I
did.**

Q. Did you go into the grand jury
not understanding what the medical report
read?

A. No.

Q. You understood what it read when
you read it -- when it was --

A. I know -- I know what it read.

Q. If I could finish my question.

You understood what the medical
examiner's report stated when you went into
the grand jury, correct?

**A. I understood what it stated when
I went to --**

Q. What was --**A. -- the grand jury.**

Q. -- your understanding as to what
it stated with regard to the blunt or multiple
blunt impacts to Mr. Lazo's body?

**A. It says in I, "Sudden cardiac
death following exertion associated with
prolonged physical altercation with multiple
blunt impacts." In III, it says, "Blunt**

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Collins

**impacts to head with multiple abrasions,
contusions and lacerations of face and scalp."
IV says, "Blunt impacts to torso with multiple
contusions and abrasion." V says, "Blunt
impacts to upper extremities with multiple
contusions." The cause of death says, "Sudden
cardiac death following exertion associated
with prolonged physical altercation with
multiple blunt impacts. Contributory is
obesity." That's on page 2.**

Q. Did the medical examiner ever
testify during this -- during her testimony in
the grand jury that any of the multiple blunt
impacts that were sustained by Mr. Lazo
actually contributed to his death?

**A. I believe that she testified that
the blunt impacts resulted in
nonlife-threatening injuries, which to me
would say that they did not contribute
themselves -- in and of themselves. However,
as part of the physical exertion during the
altercation, coupled with Mr. Lazo's physical
condition, that is what I understood the cause
of death to be.**

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1 Collins

2 MR. O'BRIEN: It's 90 minutes.

3 We're all set?

4 MR. CALLISTE: What time did we

5 start?

6 THE REPORTER: We started at

7 1:28.

8 MR. O'BRIEN: You got two minutes

9 more.

10 MR. MITCHELL: Because you marked

11 some questions for rulings, there wasn't

12 a lot, but I want to clarify. I

13 objected to the form of a couple of

14 questions that Mr. Calliste marked for

15 rulings, and just for clarification

16 because he marked it for a ruling, the

17 words that he used in his questions

18 were -- he used the phrase "district

19 attorney's office" in part of these

20 questions, whether the district

21 attorney's office, and I can't remember

22 exactly what he said, formed an opinion

23 or had a conclusion. My objection was

24 based on that a -- the district

25 attorney's office is not an entity.

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1 Collins

2 It's an -- what I'm really getting at

3 here is my objection was interposed

4 because, in essence, the district

5 attorney's office would be inferred as

6 against the County itself, and so my

7 objection to his questions that had the

8 phrase "district attorney's office,"

9 because I am representing the County,

10 that's why I interposed those

11 objections, because I viewed those

12 questions as actually asking did the

13 County as an entity have an opinion or

14 come to a conclusion. To the extent

15 that the questions were directed towards

16 the district attorney in his official

17 capacity, that would be a similar thing,

18 that it would be questions asking about

19 the County, and, lastly, to the extent

20 the questions were in regard to the

21 actual internal opinions of the district

22 attorney's office, meaning between

23 lawyers in the office, my objection

24 would be based on that they would be

25 privileged or work product. I'm putting

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1 Collins

2 this on the record because it's been

3 marked for a ruling.

4 MR. O'BRIEN: Mr. Calliste, do

5 you want to do a couple more follow-up

6 questions? I don't know if you knew it

7 was 3:00.

8 MR. CALLISTE: No.

9 MR. O'BRIEN: Are you satisfied?

10 MR. CALLISTE: I think I got what

11 I needed, yes.

12 MR. O'BRIEN: Are you sure?

13 MR. CALLISTE: Absolutely.

14 THE WITNESS: Okay. I indicated

15 to Mr. O'Brien I could stay for a bit.

16 MR. CALLISTE: That's fine. I

17 got what I needed.

18 (Time noted: 3:02 p.m.)

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2 A C K N O W L E D G M E N T

3

4 S T A T E O F N E W Y O R K)

5 :ss

6 C O U N T Y O F)

7 I, JOHN B. COLLINS, ESQ., hereby

8 certify that I have read the transcript of my

9 testimony taken under oath in my deposition of

10 June 3, 2014; that the transcript is a true,

11 complete and correct record of my testimony,

12 and that the answers on the record as given by

13 me are true and correct.

14

15

16

17 JOHN B. COLLINS, ESQ.

18

19

20 Signed and subscribed to before

21 me, this day

22 of , 2014.

23

24 Notary Public, State of New York

25

1			
2	-----I N D E X-----		
3	WITNESS	EXAMINATION BY	PAGE
4	JOHN B. COLLINS, ESQ.	MR. CALLISTE	5

6 DIRECTIONS: PAGE 16

7
8 RULINGS: PAGE 41

9 -----DOCUMENT REQUEST-----

10 PAGE 29 Exhibits or the file that was
11 maintained by the district
12 attorney's office with respect
13 to the presentment of this case
14

15 -----EXHIBITS-----

16	COLLINS	FOR I.D.	
17	A	Portion of grand jury	
18		minutes	5
19	B	Autopsy report	5
20			
21	(Counsel retained exhibits.)		
22			
23			
24			
25			

2 CERTIFICATE

3
4 STATE OF NEW YORK)

5) ss.:

6 COUNTY OF NASSAU)

7 I, ERIKA GUNTHER, RPR, a Notary
8 Public within and for the State of New
9 York, do hereby certify:

10 That JOHN B. COLLINS, ESQ., the
11 witness whose deposition is hereinbefore
12 set forth, was duly sworn by me and that
13 such deposition is a true record of the
14 testimony given by such witness.

15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or marriage; and that I am
18 in no way interested in the outcome of
19 this matter.

20 IN WITNESS WHEREOF, I have
21 hereunto set my hand this 11th day of
22 June, 2014.
23
24

25 -----
ERIKA GUNTHER, RPR

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EXHIBIT C

SUFFOLK COUNTY, NEW YORK



OFFICE OF THE MEDICAL EXAMINER

REPORT OF AUTOPSY

NAME Kenny J. Lazo ME# 08-1311
AGE 24 Years SEX Male RACE White
AUTOPSY PERFORMED BY Yvonne I. Milewski, M.D.
DATE April 13, 2008 TIME 9:15 A.M.

FINAL ANATOMIC DIAGNOSES

- I. SUDDEN CARDIAC DEATH FOLLOWING EXERTION ASSOCIATED WITH PROLONGED PHYSICAL ALTERCATION WITH MULTIPLE BLUNT IMPACTS
- II. OBESITY
 - A. BODY MASS INDEX - 38.4
 - B. HEPATIC STEATOSIS, SLIGHT
- III. BLUNT IMPACTS TO HEAD WITH MULTIPLE ABRASIONS, CONTUSIONS AND LACERATIONS OF FACE AND SCALP
- IV. BLUNT IMPACTS TO TORSO WITH MULTIPLE CONTUSIONS AND ABRASION
- V. BLUNT IMPACTS TO UPPER EXTREMITIES WITH MULTIPLE CONTUSIONS
- VI. GRANULOMATOUS INFLAMMATION, PARA-TRACHEAL AND HILAR LYMPH NODES (MICROSCOPIC)

OPINION:

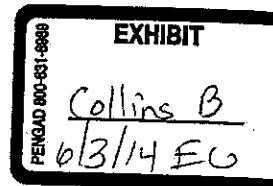
CAUSE OF DEATH:

SUDDEN CARDIAC DEATH FOLLOWING EXERTION
ASSOCIATED WITH PROLONGED PHYSICAL ALTERCATION
WITH MULTIPLE BLUNT IMPACTS

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Yvonne I. Milewski



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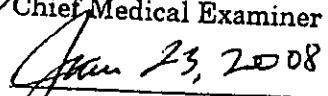
SUFFOLK COUNTY, N.Y.

KENNY J. LAZO

CASE 08-1311

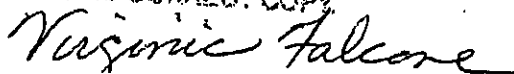
CONTRIBUTORY: OBESITY

MANNER OF DEATH: HOMICIDE


Yvonne I. Milewski, M.D.
Chief Medical Examiner

Date

YIM/dmc/vsf

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KENNY J. LAZO

CASE 08-1311

I hereby certify that I, Yvonne I. Milewski, M.D., Chief Medical Examiner, have performed an autopsy on the body identified as Kenny J. Lazo on April 13, 2008, at the Suffolk County Medical Examiner's Office commencing at 9:15 A.M.

EXTERNAL EXAMINATION:

The body is examined unclad and is that of a 66", 238 pound, well developed, well nourished White man who appears the given age of 24 years. Rigor mortis is present. Livor mortis is dark purple in color, distributed posteriorly and anteriorly in the face and upper chest distribution; it blanches in multiple places and is generally unfixed. The body is cool.

The dark brown to black straight scalp hair is 1/4" long. There is a mustache and beard. The irides are brown-hazel. There are no petechiae of the bulbar or palpebral conjunctivae; the sclerae are congested. Natural teeth in good condition are present on the maxilla and mandible. The chest is symmetric. The abdomen is distended. The extremities are symmetric. The external genitalia are those of a normally developed circumcised adult man.

There are no tattoos. Prominent abdominal striae are present over the hip regions. Numerous irregular and faded scars are present about the knees. There is a 1/2" irregularly horizontal scar above the left buttock in close proximity to the hip. There is a 3-1/2" x 1/2" hyperpigmented irregularly oval scar of the right buttock region. Inferior to this scar is a 2" linear, slightly hypertrophic scar. There is a 1" curvilinear hypopigmented scar of the posterior proximal right leg.

Except for the therapeutic interventions and injuries to be described presently, the external examination of the head, neck, torso and extremities is otherwise unremarkable.

THERAPEUTIC INTERVENTIONS

An endotracheal tube resides in the trachea. Five EKG monitor pads are adherent to the upper chest wall. Two defibrillator pads are in place. A triple lumen intravenous catheter is within the left femoral vein. A cervical collar is in place.

INJURIES, EXTERNAL AND INTERNAL:

I. HEAD AND NECK

- A. Within the right lateral forehead is a 2" x 1" subcutaneous purple/red hematoma/swelling. Within the contused area are two distinct patterns, one 1-1/4" linear contusion within the superior portion, and

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one roughly "Y" shaped, 1-1/2" to 1/4" x 1/2" shaped within the medial portion. Within the inferior portion are two, 3/8"-1/2" long fine linear abrasions.

In close proximity to the lateral corner of the right eye are a pair of fine 1/8" long linear cutaneous markings separated by 1/8", and each 1/16" wide.

Two oval pinpoint to 1/8" wide red abrasions are present within the medial right orbit.

- B. Above the medial left eyebrow region is a 1" subcutaneous swelling, with a central 1/4" fine laceration.

Three 1/8" to 1/4" oval purple contusions are present within the left upper eyelid, involving the lateral corner of the eye.

There is a 2-1/2" x 1-1/2" (in surface area region) of red swelling/contusion extending from the inferior border of the left eye onto the left cheek. Within this area of contusion are multiple pinpoint to 1/8" in diameter red abrasion/contusions, oval and some linear in morphology. There is a fine 1/4" linear laceration over the cheek prominence.

Within the superior portion of the left ear is a 1/2" in diameter oval red-purple contusion with a central 1/4" fine linear laceration.

- C. There are 2 1"- 2 1/2" wide red, full thickness scalpular contusions of right frontal scalp (underlying previously described facial injuries.) There is a 1" wide, red, full thickness contusion of the right vertex scalp. There is a 1 1/2" wide, red, full thickness hemorrhage of the left front-temporal scalp, that extends into the left temporalis muscle.

There are two full thickness, red scalpular contusions of both occipital regions, one on the left and one on the right, up to 2" in diameter maximally.

There is a 1-1/2" left vertex scalpular hemorrhage.

- D. There are no subdural or epidural blood accumulations. There is no subarachnoid hemorrhage. The leptomeninges are congested. The brain weighs 1525 grams. The external examination of the brain fails

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J. Miller

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KENNY J. LAZO

CASE 08-1311

to reveal any focal abnormalities. The brain is fixed in formaldehyde, prior to additional examination.

- E. One inch to 1-1/2" hemorrhage is present within the deep adipose tissue of the neck bilaterally. (Comment: secondary to prior venous catheterization attempts.) These areas of hemorrhage are in close proximity to the jugular veins.

There are no injuries to the strap muscles or cartilages of the neck.

There are fine punctate petechiae of the laryngeal mucosa.

II. TORSO

There is a 1-1/2" curvilinear row of approximately 1/2" triangular shaped 1/8" to 1/4" abrasions below the right nipple.

There are two fine linear superficial cuts to the right of the umbilicus, 1/8" and 3/4" in length.

There is a fine linear superficial 3-1/4" cut of the left scapular region. There are three patterned cutaneous injuries, 3/4"-1 1/8" in diameter, on the back: the left upper, right scapular and right flank regions. They consist of a complex of red abrasions demonstrating a specific pattern. The pattern is comprised of an approximately 1" long row of fine red linear abrasions, 1/16" wide and 1/8" long. Along the inferior border of this abrasion is a 1/8" thick red-purple contusion.

One 3/4" oval purple contusion and a 1/2" x 1/4" pale band-like abrasion are present within the lateral left gluteal region in close proximity to the hip. A 1/4" oval contusion is present within the medial right gluteal fold.

There are no fractures of the ribs, sternum, vertebral column or pelvis.

There are no injuries of the viscera or hemorrhagic fluid accumulations within the body cavities.

III. EXTREMITIES

- A. There is a 3/4" x 1/4" purple contusion of the lateral right antecubital fossa.

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CASE 08-1311

There is a 1" purple contusion overlying the proximal phalanx of the right third finger. There is a 1-1/2" to 2" purple contusion overlying the metatarsal phalangeal joint of the right index finger. There is a 1-1/2" red contusion overlying the right third metatarsal-phalangeal joint.

- B. Two near parallel linear red abrasions are present of the extensor left arm, 1/4" wide, and 1/8" long.

On the extensor left wrist are two 1/8" wide linear purple contusions, the more distal segment 1-1/2" in length, in close proximity to the thumb; and the more proximal 2" long in close proximity to the distal end of the forearm. Between these two segments is a 1/2" irregularly oval purple contusion.

Two near parallel 1/8" wide linear purple contusions are present on the flexor left wrist, on the thenar side. The more distal segment is 1" long, and the proximal 3/4" long.

- C. There are no significant subcutaneous or skeletal injuries of the lower extremities.

- D. There are no fractures of the long bones.

These injuries having been described once will not be repeated.

INTERNAL EXAMINATION:

HEAD:

See injury described above.

NECK:

See injury described above.

BODY CAVITIES:

There are no liquid accumulations of the pleural, pericardial or peritoneal cavities. The organs are normally situated and markedly congested.

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CARDIOVASCULAR:

The 420 gram heart has a smooth pericardium, epicardium and endocardium. There is no cardiac chamber dilatation. The valves are thin without vegetations, fibrosis or calcification. The coronary arteries arise from patent ostia and distribute in a right dominant pattern. There is no atherosclerosis. Myocardial cut surfaces are red-brown without fibrosis or necrosis. The pulmonary trunk has no thromboemboli. The vena cava have no thrombi. The aorta has no atherosclerotic plaque.

RESPIRATORY:

The right and left lungs weigh 425 and 500 grams respectively. The pleural surfaces are thin and delicate. The cut surfaces are red-brown without focal induration, cavitation, hemorrhage or injury. The bronchi and pulmonary arteries are patent.

LIVER, GALLBLADDER AND PANCREAS:

The 2220 gram liver has a thin capsule and unremarkable red-brown parenchyma without fatty change or cirrhosis. The gallbladder has no stones. The pancreas as tan lobulated parenchyma.

HEMIC AND LYMPHATIC:

The 120 gram spleen has a thin capsule and unremarkable red-brown parenchyma. Lymph nodes are not enlarged.

GENITOURINARY:

The right and left kidneys weigh 145 and 150 grams respectively. The external surfaces are smooth. The cut surfaces are red-brown without focal abnormality. The ureters are slender. The bladder contains approximately 300 ml of urine.

ENDOCRINE SYSTEM:

The pituitary, adrenal and thyroid glands have no nodularity, hyperplasias or infiltrates.

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Veronica Falcone

Jimmie Lazo

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GASTROINTESTINAL TRACT:

There are no ulcers of the esophagus, stomach or duodenum. Approximately 300 ml of partially digested gastric material is present within the gastric lumen. Small and large intestines are unremarkable. The appendix is in place.

MUSCULOSKELETAL:

There are no fractures of the ribs, sternum, vertebral column or pelvis. The musculature is developed.

The skin, subcutis and deep soft tissues are incised and dissected off the skeleton. There are no additional soft tissue injuries found.

YIM/dmc/vsf

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Virginia Holmes

[Signature]

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MICROSCOPIC EXAMINATION

HEART: (thirty four sections, including conduction system): Focal slight myocyte hypertrophy. Rare subtle perivascular fibrosis surrounding myocardial arterioles. Focally infiltrative microscopic fat within right ventricular wall (not transmural).

MITRAL VALVE (one section): No pathologic abnormality.

KIDNEY (two sections): Rare sclerosed glomerulus. No significant pathologic abnormality of the tubules, interstitium or blood vessels.

LIVER (one section): Marked vascular congestion. Slight centri-lobular steatosis. Focal, rare centrilobular lymphocytic aggregates.

SPLEEN (one section): No pathologic diagnosis.

ADRENAL GLANDS (two sections): No pathologic diagnosis.

LUNGS (nine sections): Abundant gastric material present within bronchioles, some associated with post mortem bacterial growth. Microscopic cellular granulomas within hilar lymph nodes present. Special stains for micro-organisms ordered.

GASTROINTESTINAL TRACT (three sections): No pathologic abnormality.

TRACHEA (one section): Para-tracheal lymph node with several microscopic cellular granulomas. Special stains for microscopic organisms ordered.

DIAPHRAGM (one section): No pathologic diagnosis.

PANCREAS (one section): Extensive autolysis.

PITUITARY GLAND (one section): No pathologic diagnosis.

PROSTATE GLAND (one section): No pathologic diagnosis.

BONE MARROW (two sections): No pathologic diagnosis.

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SOFT TISSUE SAMPLES

RIGHT FRONTAL SCALP (one section): Acute hemorrhage without reactive inflammation.

LEFT FRONTAL SCALP (three sections): Acute hemorrhage without reactive inflammation

LEFT SCALP (one section): Acute hemorrhage without reactive inflammation

RIGHT VERTEX SCALP (one section): Acute hemorrhage without reactive inflammation

RIGHT OCCIPITAL SCALP (one section): Acute hemorrhage without reactive inflammation

LEFT OCCIPITAL SCALP (one section): Acute hemorrhage without reactive inflammation

LEFT EAR (one section): Acute hemorrhage without reactive inflammation

TONGUE (one section): No pathologic abnormality.

RIGHT NECK (one section): Acute hemorrhage without reactive inflammation

LEFT NECK (one section): Acute hemorrhage without reactive inflammation

NECK, SIDE NOT SPECIFIED (one section): Acute hemorrhage without reactive inflammation

RIGHT BACK (one section): Acute hemorrhage without reactive inflammation

LEFT BACK (one section): Acute hemorrhage without reactive inflammation

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LEFT WRIST (one section): Acute hemorrhage without reactive inflammation

SKIN AND SUBCUTIS, SITE NOT SPECIFIED (BLOCK #36): Acute hemorrhage without reactive inflammation



Yvonne I. Milewski M.D.

Chief Medical Examiner

June 23, 2008

Date

YIM/vsf

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Toxicologic Report

Page 1 of 2

Division of Medical Legal Investigation and Forensic Sciences
Suffolk County, New York

NAME: LAZO, KENNY J.

TOX NO: 0301-2008

ME NO: 2008-1311

EXAMINATION DATE: 4-13-08

ANALYSIS PERFORMED: GENERAL UNKNOWN

SPECIMENS SUBMITTED:

Femoral Blood, Pulmonary Artery Blood, Aortic Blood, Chest Blood, Vitreous Fluid, Bile, Urine, Brain, Liver, Gastric Contents, Small Intestinal Contents, Mouth Swab, Retainer Serum - Chest, Retainer Blood - Chest

SPECIMENS USED FOR ANALYSIS:

Femoral Blood, Pulmonary Artery Blood, Aortic Blood, Urine, Liver, Gastric Contents, Small Intestinal Contents

RESULTS

VOLATILE SUBSTANCES

ETHANOL:

Femoral Blood - Not Detected (4/14/2008)

OTHER VOLATILE SUBSTANCES:

Femoral Blood - Not Detected (4/14/2008)

EMIT SCREEN

URINE - Acetaminophen, Amphetamines, Barbiturates, Benzodiazepine Metabolites, Methadone, Opiates, PCP, Propoxyphene, Salicylates Not Detected (4/15/2008)

DRUG RESULTS

COCAINE:

Aortic Blood - Not Detected (4/17/2008)

Urine - Not Detected (4/17/2008)

Gastric Contents - Not Detected (4/17/2008)

Small Intestinal Contents - Not Detected (4/17/2008)

COCAETHYLENE:

Aortic Blood - Not Detected (4/17/2008)

Urine - Not Detected (4/17/2008)

Gastric Contents - Not Detected (4/17/2008)

Small Intestinal Contents - Not Detected (4/17/2008)

BENZOYLECGONINE:

Aortic Blood - Not Detected (4/21/2008)

Urine - Less Than 0.125 mg/L (4/21/2008)

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Toxicology Report
Division of Medical and Forensic Sciences
State of New York
NAME: JAMES HENRY J. NO. 031-2008 MEK 07008-1310

LIDOCAINE:

Liver - Present (4/21/2008)

TETRAHYDROCANNABINOL:

Pulmonary Artery Blood - 14.5 mcg/L (4/15/2008)

CARBOXYLIC ACID METABOLITE OF TETRAHYDROCANNABINOL:

Pulmonary Artery Blood - 212 mcg/L (4/15/2008)

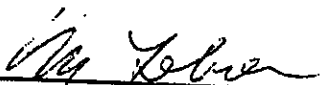
Urine - 943 mcg/L (4/28/2008)

OTHER BASIC DRUGS:

Liver - Not Detected (4/21/2008)

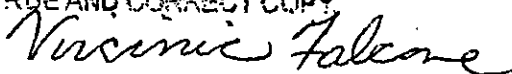
OTHER ACIDIC AND NEUTRAL DRUGS:

Pulmonary Artery Blood - Not Detected (4/14/2008)


Michael Lehrer, PhD.
Chief - Toxicology Laboratory

Date: 5/21/08

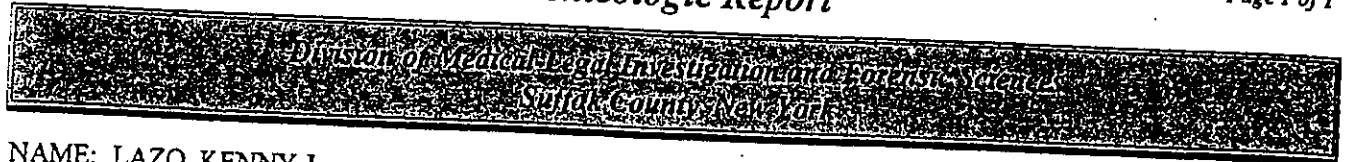
Y M
I HEREBY CERTIFY THAT THIS IS
A TRUE AND CORRECT COPY



5/16/2008 bak

Toxicologic Report

Page 1 of 1



NAME: LAZO, KENNY J.

TOX NO: 0301-2008

ME NO: 2008-1311

EXAMINATION DATE: 4-13-08

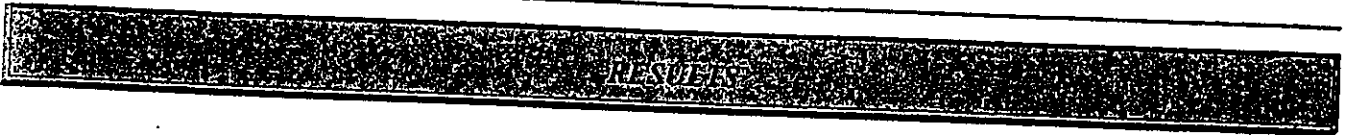
ANALYSIS PERFORMED: DRUG QUANTITATION

SPECIMENS SUBMITTED:

None

SPECIMENS USED FOR ANALYSIS:

Antemortem Blood



DRUG RESULTS

BENZOYLECGONINE:

Antemortem Blood - Not Detected (5/5/2008) (Sm. Purple top tube in bag labeled 04/12/08 #31231810)

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A TRUE AND CORRECT COPY.

Y.M.
Vincent Falcone

Michael Lehrer
Michael Lehrer, PhD
Chief - Toxicology Laboratory

Date: 5/21/08

5/21/2008 bak

SUFFOLK COUNTY MEDICAL EXAMINERS OFFICE
NEUROPATHOLOGY REPORT

CASE NUMBER: 2008-1311

NAME OF DECEDENT: KENNY J. LAZO

GROSS EXAMINATION:

Brain weight: 1525 grams (fresh).

The specimen is the dura and brain of an adult.

The cerebral dura is not remarkable.

The brain is not swollen. There is no sign of herniation or cerebral midline shift. The leptomeninges are thin and delicate. The cerebral gyri are of normal size, configuration and consistency. The external aspects of the brainstem and cerebellum are not remarkable. The arteries at the base of the brain follow a normal distribution and are free of atherosclerosis.

Serial sections of the brain, brainstem and cerebellum reveal uneven formalin fixation, as evidenced by residual pink-grey discoloration of the deep white matter and nuclei, the basal portions of the brain, and central brainstem (Comment: Fixation artifact). Coronal sections of the cerebrum reveal no focal lesions in the cortex, white matter or deep nuclear structures. Sections of the brainstem and cerebellum show no focal abnormalities. The ventricles are of normal size and configuration.

PHOTOGRAPHS: Yes.

MICROSCOPIC EXAMINATION: Yes.

H & E sections:

1. Frontal lobe - not remarkable
2. Cingulate gyrus and corpus callosum - not remarkable
3. Hypothalamus- not remarkable
4. Basal ganglia, internal capsule and insular cortex- not remarkable
5. Thalamus and internal capsule - not remarkable
6. Right hippocampus - not remarkable
7. Left hippocampus - not remarkable
8. Occipital lobe - not remarkable
9. Midbrain - not remarkable
10. Pons - not remarkable
11. Medulla - not remarkable
12. Cerebellum with dentate - not remarkable
- 13 - 17. Spinal cord - not remarkable

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A TRUE AND CORRECT COPY.

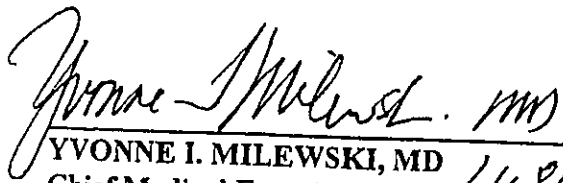
Virginia Folcone

Yimulw 8L

Comment: There is extensive irregular vacuolization of the white matter in many of the sections, from various different parts of the brain. In some of the sections, the cortical neurons appear shrunken and discolored. These findings are consistent with autolysis.

DIAGNOSIS:

ADULT BRAIN; NO PATHOLOGIC ABNORMALITIES


YVONNE I. MILEWSKI, MD
Chief Medical Examiner 6/18/08

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A TRUE AND CORRECT COPY.



EXHIBIT D

LAW OFFICES OF
FREDERICK K. BREWINGTON

ATTORNEYS AND COUNSELORS AT LAW
50 CLINTON STREET, SUITE 501
HEMPSTEAD, N.Y. 11550-4282

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FREDERICK K. BREWINGTON

IRA FOGELGAREN

GREGORY CALLISTE, JR.

VALERIE M. CARTRIGHT

MILI MAKHJANI

October 17, 2008

BY CERTIFIED MAIL RETURN RECEIPT REQUESTED and BY FAX

John Collins, Esq., Chief of the Homicide Bureau
Suffolk County District Attorney's Office
Homicide Bureau
Criminal Courts Building
200 Center Drive
Riverhead, NY 11901-3388

Re: Kenny Lazo- D.O.B 12/30/83
Date of Incident: 4/12/08
Cental Complaint #: 08-185633

Dear Mr. Collins,

We are in receipt of yours dated today. Your letter does not give us any further information than was provided on August 19, 2008 when we met. The claim that "the District Attorney's investigation is proceeding" fails to give any substantive statement that the matter is being or about to be presented to the Grand Jury as your office promised and stated publicly. The actions being taken now appear strikingly similar to the mode of operations of your office in the past where police officers have been involved. The statement that I am to notify you prior to Tuesday, October 21, 2008 of any change in our position is curious. We have heard nothing from you for nearly two months and now you are asking for input within two business days. What is reason why October 21, 2008 is our cut-off?

The comment that, "[I] did not desire [] our forensic expert, Dr. Thanning, be called before the Grand Jury", is unclear. It is your office that should be prosecuting this death case in the same fashion and with the same zeal that you approach others. The fact that Dr. Thanning was hired by the family does not place any obligation on them to supply or dictate what witnesses will or will not be presented to the Grand Jury. We ask that you and your office make the independent decision as to who and what needs to be presented and we will attempt to provide what support we can. Finally, we know that you should have records of all the persons in the Precinct on the night of the death of Mr. Lazo and since we have not been provided with any of that information and have not been able to interview those persons, we cannot affirm that there are "no other relevant witnesses that [we] request be called before the Gand Jury."

We asked you to inform us if and when this matter will be presented and your most recent letter still fails to respond to this basic request. Accordingly, we demand that you give this case up and release this entire case to the United States Attorney for prosecution.

Thank you for your consideration in this matter.

Sincerely,


FREDERICK K. BREWINGTON

cc: David A. Pincus, Esq.

Lazo 366

EXHIBIT E

COUNTY COURT : SUFFOLK COUNTY

-----X
THE PEOPLE OF THE STATE OF NEW YORK :

INVESTIGATION INTO THE DEATH :

of :

KENNY LAZO :

Term XI

Grand Jury 1A

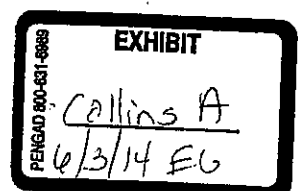
-----X
October 27, 2008
Riverhead, New York

G R A N D J U R Y M I N U T E S

#D-2913-A-B-C-2008

APPEARANCES:HON. THOMAS J. SPOTA, ESQ., District Attorney of
SUFFOLK COUNTY, by: JOHN COLLINS, ESQ.,
Assistant District Attorney of Counsel, for the
People.

Myrtle Kiefer
Grand Jury Reporter



1 I'm going to call in Dr. Yvonne Milewski.

2 (No questions by any members of the Grand Jury)

3 MR. COLLINS: Step in, Doctor.

4 (Witness entering the Grand Jury Room)

5 MR. COLLINS: I'll ask you to stand in front of that
6 chair and look to the back of the room, please.

7 THE FOREPERSON: Dr. Yvonne Milewski, called as a
8 witness on behalf of the People, having been duly
9 sworn by the Grand Jury Foreperson, testifies as
10 follows:

11 Q May we have your name and affiliation for the record?

12 A Yvonne Milewski, M-I-L-E-W-S-K-I, Chief Medical Examiner of
13 Suffolk County.

14 MR. COLLINS: Are you comfortably situated there,
15 Doctor?

16 THE WITNESS: Yes.

17 EXAMINATION BY MR. COLLINS:

18 Q What's your current assignment?

19 A I'm Chief Medical Examiner for Suffolk County.

20 Q How long have you held that particular position?

21 A Over one year, near one year and a half.

22 Q Could you describe your duties there as Chief Medical
23 Examiner for Suffolk County?

24 A Well as Chief Medical Examiner, I'm the Administrative Head
25 of the Medical Examiner's Office. What that means is I have

1 one hundred and five people who work in the ME's Office and
2 we have our building which houses the Crime Lab, Toxicology
3 Lab and we also perform medical examiner functions. I
4 perform autopsies on individuals who died in undetermined
5 or violent circumstances. There are four Medical Examiner
6 positions on staff and I'm the boss of many of the staff
7 and I also do autopsies myself.

8 Q Would you tell us Doctor Milewski, are you a medical
9 doctor?

10 A Yes.

11 Q Would you please tell me your education and professional
12 background toward your becoming the Suffolk County Chief
13 Medical Examiner?

14 A I attended Northwestern University, Chicago where I
15 received a Bachelor of Science and M.D. Degree and I did a
16 year at Temple University Medical Internship at Lankenau
17 Hospital, Philadelphia as well as Anatomic Pathology
18 Residency Program, two years at the University of
19 California, San Francisco and one year at NYU, I completed
20 a Forensic Pathology Fellowship and brought me to the
21 Office of the Chief Medical Examiner, New York City. After
22 finishing that Fellowship, I stayed as a Senior Medical
23 Examiner for eleven years. Over the last four of those
24 years I ran the Bronx operation for the City of New York
25 and after that I went to Columbia University and did a

1 residency for two years, a Neuropathology Fellowship which
2 studies the brain and diseases. After that I went to the
3 University of Texas, Galveston where I stayed with the
4 Faculty for two and a half years teaching Forensic
5 Pathology and Neuropathology. I left that position to come
6 here as Chief Medical Examiner.

7 Q Are you Board Certified, Doctor in any particular medical
8 discipline?

9 A Yes, Anatomic and Forensic and Neuropathology and I'm also
10 a Diplomat with the National Board of Medical Examiners.

11 Q Could you describe for the jurors what that means?

12 A Well in order to get a license to practice medicine, you
13 have to have a Diplomat of Satisfaction by the Board of
14 Medical Examiners. That's what my credentials refer to.

15 Q Are you licensed to practice medicine in several states of
16 the United States?

17 A Yes. I'm licensed to practice in New York, Texas and
18 California. I let my Pennsylvania license go.

19 Q So you were at one time licensed to practice in
20 Pennsylvania?

21 A Yes, I decided not to renew it. I let it lapse.

22 Q Doctor Milewski, would you tell us what Pathology is?

23 A Well it's really a general term used in medicine.

24 Basically, it means it is an explanation for disease or
25 abnormal conditions.

1 Q What is Forensic Pathology?

2 A That's a sub-specialty area of pathology. It focuses on
3 findings on the body, one may see that it's a result of
4 physical force or trauma and application of forensic
5 pathology, most times, the ME or pathologist are asked to
6 come to determine the cause of death and autopsies are
7 done.

8 Q What is an autopsy?

9 A An autopsy is an examination of a body after death. It
10 includes several parts. We have an external exam which
11 involves taking x-ray photographs and noting height, weight
12 and age and we identify information where there is external
13 evidence of trauma and that's documented and then there is
14 the internal part of the autopsy, you look for evidence of
15 disease and also look for internal injuries that correlates
16 with what someone may see on the outside of the body and
17 another part of the internal, you take samples of tissues
18 and bodily fluids for additional tests and all that is done
19 to arrive at cause of death.

20 Q What is Toxicology?

21 A That's a sub-specialty area of medicine in the forensic
22 area it's to study fluids and body tissues which are
23 removed at autopsy to determine the presence of medication
24 or illicit drugs.

25 Q Does an autopsy generally include a toxicological

1 examination?

2 A Yes, in our facility, we do that.

3 Q So that is done in house, so to speak?

4 A Yes, we certify the Toxicology Lab.

5 Q In house?

6 A Yes.

7 Q Doctor, I'd like to direct your attention, if I may, to
8 April 13th of 2008. Do you recall being requested to
9 perform an autopsy on a person, now known as Kenny Lazo,
10 that day?

11 A Yes.

12 Q Were you at your office Hauppauge on that particular date?

13 A Yes.

14 Q Did there come a time on that same day that you conducted
15 an autopsy on Kenny Lazo with regard to his cause of death?

16 A Yes.

17 Q Would you please, if you could Doctor, describe and tell us
18 the manner how that autopsy progressed?

19 A Well, just as I described before there is a further,
20 externally you make certain observations and document
21 different things.

22 Q What do you mean by that?

23 A Well, say at the time of the autopsy he was 5'6" tall and
24 238 pounds and he appeared as an obese Hispanic man who
25 appeared to be the age of 24 years and as is the case in

1 many of these cases, we worked up to the cause of death. We
2 did body x-rays and I did full body photographs and we
3 documented what we saw externally. We reviewed the external
4 exam and if there is evidence of blunt force trauma outside
5 the body, if we find contusions which are abrasions with
6 scrapes of skin and lacerations which are tears of skin. If
7 these findings were present on the face and head and torso
8 and extremities, we check all this.

9 Q Did you document these particular injuries photographically
10 as you described?

11 A Yes.

12 Q With regard to the x-rays that you conducted pursuant
13 through your office, did Mr. Lazo have any fractures
14 whatsoever?

15 A No fractures.

16 Q Following your examination of Mr. Lazo externally, did you
17 then progress to the internal examination of his organs and
18 the underlying area of external injuries that you noted?

19 A Yes I did, with the exception of bruises of the scalp which
20 were identified by dissecting the scalp of his head and
21 there were no internal components to an external injury.

22 Q What do you mean by that?

23 A The injuries were limited to the external aspect of the
24 body, no internal organ injury, no significant area of
25 major hemorrhage or blood loss.

1 Q Did Mr. Lazo's body exhibit any indication of medical
2 intervention, that was noted, as well?

3 A Yes, there were two areas of hemorrhage on the side of the
4 neck, internally there was distribution typically for
5 jugular vein catheterization attempted.

6 Q Do your medical records reveal external jugular ports were
7 attempted by the ambulance crew and people assisting the
8 ambulance crew?

9 A Yes.

10 Q So were your findings with regard to internal bleeding in
11 Mr. Lazo's neck consistent with the attempted placement of
12 external jugular port, my word?

13 A Yes, those injuries were determined to come from the
14 attempted placement of the external jugular port.

15 Q And were there any other injuries to Mr. Lazo's neck area
16 of any significance?

17 A No injury to the muscle or larynx or cartilage of the neck.

18 Q Did you find any injuries in your autopsy of Mr. Lazo that
19 were life threatening injuries?

20 A No, there were no injuries to any of the life sustaining
21 organs, the brain, the heart, no areas of major internal
22 hemorrhage

23 MR. COLLINS: What I'd like to do Doctor, if I may, is show
24 you a series of photographs that have been previously
25 marked as Numbers Thirty-nine through Fifty-five.

1 I'll ask you to take a moment Doctor, and I'll ask you
2 to take a look at each of these items and tell us whether
3 or not you are familiar with these photographs. You can do
4 them en masse. Do you want the list for each exhibit?

5 THE WITNESS: Not yet.

6 Q Are you familiar with Photographs Thirty-nine through
7 Fifty-five?

8 A Yes, I am.

9 Q Were these photographs that were caused to be taken by you
10 to illustrate the injuries to Mr. Lazo in the course of the
11 autopsy?

12 A Yes.

13 Q Do they fairly and accurately reflect the areas of his body
14 as you recall them on April 13, 2008?

15 A Yes.

16 MR. COLLINS: Would they assist you in describing your
17 findings of the injuries?

18 THE WITNESS: Yes.

19 MR. COLLINS: What I'd like to do Doctor, is put them
20 on the screen so everyone can see them. You may want
21 to use the laser pointer. You may want to just stay in
22 your seat or you can stand and I'll ask you to please
23 make every effort to keep your voice up so everyone
24 can hear you. I know you can do that.

25 I'm going to show you this photograph, Number

1 Thirty-nine and I'm going to ask you, how is the light
2 for everyone?

3 (Grand Jury indicating collectively the light in the
4 room is satisfactory)

5 Q Could you describe for us, if you will Doctor, you have
6 number Thirty-nine, is there any evidence of injuries noted
7 in your autopsy?

8 A This is the back of the deceased, the first thing I'll
9 point out to you, you may question this bowed area, red
10 discoloration is livor mortis, pool of blood after death
11 happened. Mostly depending on the part of the body after
12 death. The first question, is that a bruise? It's not
13 bruise, it's livor mortis. But these three pattern
14 injuries, any contusions and we'll have a picture later
15 show more pattern injuries, they're really short little
16 abrasions. They have three areas here representing the
17 superficial cutaneous injury which means it's limited to
18 the skin.

19 Q Did you learn during the course of your investigation into
20 this case that involved police officers striking Mr. Lazo
21 with a flashlight?

22 A Yes, I came to learn that these pattern injuries have the
23 same pattern really linear impressions beneath these three
24 injuries. Noted on the back, they were surface injuries.
25 The picture does show part of the autopsy was the dissected

1 skin off the entire body to demonstrate large area bruising
2 that may not be obvious to the naked eye. The red color is
3 because of hemorrhage of the skin just underneath but it is
4 superficial. So there is no underlying fracture or
5 significant injury below. All the bruises are confined to
6 the skin, just the fatty underneath.

7 Q If I could direct your attention to that photograph Doctor,
8 to Mr. Lazo's neck, the back of his neck?

9 A That is the horizontal line across the back of his neck.
10 That's a piece of medical tape that secures, that holds and
11 secures the endocranial tube of the trachea.

12 Q So that area in the back of the neck that extends
13 horizontally, slightly in the back of the neck is not an
14 injury?

15 A No, it's red because of some blood fluid there.

16 MR. COLLINS: I'm going to show you Exhibit Number
17 Forty.

18 A (Interjecting) Yes, in this photograph, well this is a
19 picture we see one of the pattern injuries I referred to
20 before and sort of a faint livor mortis, a very superficial
21 cut about three inches long, kind of like you would see if
22 you took a fingernail and scraped it confined to the skin.

23 MR. COLLINS: Photograph Number Forty-one, Doctor?

24 A This is the lower half of the body of Mr. Lazo and you see
25 some livor mortis changes I have described before. In this

1 picture, you can see an abrasion and contusion on the
2 lateral left buttock area, small bruises here right below
3 the buttock here (indicating) and these injuries, one on
4 the left buttock and one on the right buttock were limited
5 to the skin as were the injuries to the back as well as the
6 bruises -- so it's a little bit on the skin and fatty
7 underneath skin but they are superficial injuries.

8 MR. COLLINS: I think we have two choices, those two
9 bruises, Doctor. Exhibit Forty-two.

10 A Here is the lower side of the left buttock area, there's a
11 bruise, very superficial abrasion of the skin.

12 Q In your experience Doctor, would that bruise indicated in
13 Photograph Number Forty-two be consistent with a bit
14 through clothing?

15 A It could be consistent with that. When people bite the
16 skin, they would use both the upper and lower jaw to cause
17 an injury. That's a possible explanation for that.

18 MR. COLLINS: Number Forty-three, Doctor?

19 A Well this is a crease in the middle area of the buttock
20 area. It's the bottom there (indicating), there's sort of a
21 small puffy purple from the bite itself.

22 Q How deep an injury, how severe an injury?

23 A Again, it is a superficial bruise. There's some blood,
24 that's why it's purple. It does go into the fat a little
25 bit on the skin but it's superficial.

1 Q Doctor, but could the injury in Exhibit Forty-three be
2 consistent with a human bite?

3 A Sure, anything that's blunt that touches the body on the
4 surface would make a bruise so it's consistent.

5 MR. COLLINS: Exhibit Number Forty-four now Doctor?

6 A This left face, the first thing once you see this piece of
7 bloody gauze, it is related to endotracheal tube
8 (indicating) an area of the decedent's mouth. Here you see
9 a few impact sites, there is small laceration abrasion
10 above the eyebrow area of an irregular bruise that's
11 depicted on the skin, sort of a laceration and scrape so
12 the brow area here, also bruise and laceration on the left
13 over the front eyelid swollen because of pressure on a
14 bruise. Well in this case, when I explain there is a scar
15 within the left eyebrow which is seen and documented.

16 Q Doctor, in regard to each of the injuries denoted on the
17 left side of Mr. Lazo's face and in the vicinity of his
18 ear, did you dissect the area of those injuries as well and
19 determine how severe they were?

20 A Yes. It was limited to the skin and fat beneath the skin,
21 no fractures associated with these injuries.

22 MR. COLLINS: Number Forty-five Doctor. I believe this
23 is a close-up of the same general area?

24 A Yes, that's a close-up. Here in this photograph you can see
25 more clearly what's depicted. The skin has lacerations here

1 (indicating) and the sort of lacerations, some of them
2 almost look like little cuts, this pattern (indicating).
3 This type of bruising with multiple cuts and abrasions,
4 typically what I would call road rash, something striking
5 gravel or an irregular road surface, we see that pretty
6 much in car accident investigations.

7 MR. COLLINS: Number Forty-six, Doctor?

8 A Well we have a wider view of the face and some more of the
9 injuries we saw before but here we see the right side of
10 the face from the front. This large area here is bruising
11 and then an abrasion right here. (indicating)

12 Q You're indicating Doctor, the area of the right eyebrow?

13 A Yes.

14 Q Doctor, the injuries that's depicted here on Mr. Lazo's
15 face, they were superficial in nature?

16 A Yes.

17 Q There were no fractures demonstrated in any of those
18 depicted injuries?

19 A No, no fractures.

20 MR. COLLINS: Number Forty-seven, Doctor?

21 A This is the right side of the face here. You can see it a
22 little better than what you saw before. It's a broad area
23 of contusion and bruising and you can see a little pattern
24 here with some irregular lines, linear abrasions and
25 lacerations here (indicating) to which tears the skin from

1 blunt force trauma.

2 Q With regard to the injury to the right temple depicted in
3 the photograph, did you dissect that injury to determine
4 the severity?

5 A Yes.

6 Q What were your findings?

7 A Well what we do is, we look at the injury like that in the
8 scalp and we peel the scalp back, two areas where the
9 bruises underneath the scalp, this is like a broad,
10 continuous area, two impacts. It appears the injury, the
11 injury to the right temple area is consistent with having
12 been caused by the previously described flashlight and a
13 flashlight is a blunt instrument and sure, that instrument
14 would cause injury like that.

15 MR. COLLINS: Number Forty-eight?

16 Q This appears to be a close-up of this same area, right
17 temple area?

18 A Yes, it was taken in that area so you can appreciate this
19 abrasion a little bit more medium end of the right eye
20 area, you can see irregularity of pattern in here.
21 (indicating)

22 MR. COLLINS: Number Forty-nine.

23 A This appears to show the right eye and nose area and with
24 this picture you really see the pinpoint type of abrasion
25 associated with both, very small, this is barely a quarter

1 inch in width.

2 MR. COLLINS: Number Fifty, Doctor?

3 A Number Fifty is a bruise on the left ear with a laceration
4 in the middle so this is a blunt force injury that caused
5 bleeding into the skin and tear of the ear.

6 Q Again Doctor, did you dissect that injury as well?

7 A Yes, this part of the scalp area is peeled back. There was
8 no fracture under that area and no tear to cause major
9 blood loss behind the ear.

10 MR. COLLINS: Doctor, Number Fifty-one?

11 A This is the right side of the decedent's chest looking at
12 the front here, the right nipple here (indicating) the red
13 pattern, red abrasion, sort of each individual one of these
14 triangular shape injury is limited to the skin.

15 Q In the course of your investigation did you learn that Mr.
16 Lazo, at the time of his altercation with the police, was
17 wearing a rather heavy, large necklace with a silver cross
18 on the end of it?

19 A Yes.

20 Q Would that injury to the right chest area be consistent
21 with having been caused by, abraded by that particular
22 cross and chain?

23 A Yes.

24 Q Other than that particular injury on the right chest
25 denoted in Exhibit Fifty-one, did the front of Mr. Lazo's

1 body from the waist up show any other area of injury?

2 A Well not depicted in that picture, two short little
3 scratches near the belly but that was limited to the skin
4 but is not shown on the picture.

5 Q Did you have occasion Doctor, as part of your autopsy to
6 dissect the chest area and see what was beneath that area
7 of injury you just denoted on the front of Mr. Lazo's body?

8 A Yes, like with the rest of the body we did peel off the
9 area skin and soft tissue off the skeleton and there was no
10 fractured ribs in that area.

11 Q Is there an injury denoted in the right breast?

12 A Basically, a superficial injury limited to the skin
13 superficially.

14 MR. COLLINS: Exhibit Fifty-two?

15 A This is the right hand of Mr. Lazo. This is the pinky here
16 (indicating) and you can see a broad area of purple
17 bruising on the back of the hand, sort of spilling onto the
18 knuckle here (indicating) the back of, not even over the
19 knuckle, between the knuckle and middle finger.

20 Q Are there any fractures denoted, any injuries to the hand?

21 A No fractures to the area.

22 Q Are these injuries consistent with Mr. Lazo's hand having
23 been struck multiple times by a blunt instrument?

24 A Yes, by a blunt instrument.

25 MR. COLLINS: Number Fifty-three, Doctor?

1 A This is the right wrist of Mr. Lazo. You can see the start
2 of some purple discoloration, livor mortis, so not a
3 bruise, post mortem changes increases here but no bruises,
4 the injury increases here. (indicating)

5 MR. COLLINS: Number Fifty-four?

6 A This is like the same picture. It's kind of the right wrist
7 and again, the absence of any significant injury to this
8 area.

9 MR. COLLINS: Number Fifty-five?

10 A This is the right palm and right wrist. Again, it basically
11 shows the absence of any significant injury here.

12 MR. COLLINS: Doctor, I have five more photographs to
13 show you. If you could just take a look at those
14 please and tell me whether or not you recognize them.

15 (Photographs published to Dr. Milewski and viewed
16 by Dr. Milewski)

17 MR. COLLINS: Photographs Fifty-six through Sixty. Do
18 you recognize them?

19 A Yes, I do.

20 Q Do they also fairly and accurately depict the portions of
21 Kenny Lazo's body as observed by you during your autopsy on
22 April 13th of 2008?

23 A Yes.

24 Q Do you represent that those areas of Mr. Lazo's body are
25 fair and accurate as you recall them?

1 A Yes, they are.

2 MR. COLLINS: Ladies and Gentlemen, Items Fifty-six
3 through Sixty will be received in evidence as well.

4 (Documents placed in evidence)

5 MR. COLLINS: I will now put Number Fifty-six up on the
6 screen.

7 Q Doctor, could you tell us about that?

8 A This is the left hand and wrist of Kenny Lazo and you can
9 see purple discolorations come into view and the bruises or
10 contusions, this is one area skin dissection, we peel off
11 the skeleton, this is the left hand area and it shows a
12 bruise.

13 MR. COLLINS: Number Fifty-seven, Doctor?

14 A This shows a couple of areas of bruising. This oval bruise
15 or band like bruise here and a faint bruise area over here
16 (indicating) to the left wrist, the area is a band like
17 bruise which we refer to the left wrist area.

18 Q Doctor, is that your experience, is that consistent perhaps
19 with having been caused by a handcuff?

20 A Yes.

21 MR. COLLINS: Number Fifty-eight, Doctor?

22 A This is a side view of what you just saw earlier, one of
23 the bruises here sort of looks oval here but part of a band
24 like configuration and bruising around the left wrist.

25 MR. COLLINS: Fifty-nine, Doctor?

1 A Again, more bruising. This is part of the bruise which I
2 looked at the side and there are two faint linear areas,
3 two rows of bruising here.

4 MR. COLLINS: And Sixty, Doctor?

5 A It shows the same thing we were talking about earlier,
6 slightly overexposed but it shows the purple color and
7 bruising.

8 MR. COLLINS: You can have a seat, Doctor.

9 Q Now in addition to the autopsy as described by you thus
10 far, did your Office conduct a toxicological exam on
11 Mr.Lazo's bodily fluids?

12 A Yes, the Toxicological Report verified the presence of a
13 kind of a breakdown product, Benzoylecgonine was present in
14 the urine and it was a very trace amount.

15 Q So there was no active cocaine or active cocaine in the
16 blood?

17 A No.

18 Q Was that indicative of usage close to the time of death or
19 some past usage?

20 A Perhaps it's more consistent in past usage because the body
21 can store this breakdown product in the tissues. It sort of
22 enters the blood stream and goes to the urine. It could
23 reflect use that was days before the death, otherwise you
24 would see the presence of it in the blood.

25 Q How about marijuana in the system?

1 A Well the same, the active cannabis compound, so Mr. Lazo
2 may have used marijuana that day, maybe even close to the
3 time of his death.

4 Q Was there anything life threatening about the presence of
5 the amount of marijuana in Mr. Lazo's system?

6 A No, nothing life threatening in the presence of marijuana.

7 Q And the presence of cocaine by-product, would that be life
8 threatening in the presence of that in Mr. Lazo's system?

9 A No, for it being life threatening it has to be present in
10 the blood and it's not present in the blood.

11 Q Did the presence of either of those drugs in Mr. Lazo's
12 system contribute to his death?

13 A No.

14 Q Doctor, based on your autopsy and all the information
15 available to you in this case, did you reach a conclusion
16 to a reasonable degree of medical and scientific certainty
17 with regard to the cause of Mr. Lazo's death?

18 A Yes.

19 Q Could you please tell us what that opinion was and explain
20 if you would please?

21 A The cause of death that was determined was by Sudden
22 Cardiac Death following prolonged physical altercation with
23 multiple blunt impacts. I arrived at the cause of death in
24 the absence of any significant internal injuries to explain
25 his death and in the absence of any major life threatening

1 diseases that would affect his internal organs and I also
2 used my determination by the medical information given to
3 me and witnesses' testimony that was described during the
4 period of time surrounding his death.

5 Q How is that period of time surrounding his death perhaps,
6 the altercation and his becoming unresponsive according to
7 witnesses, how did you enter that into your assessment?

8 A Well Sudden Cardiac Death, the heart takes a sudden heart
9 stoppage, not something diagnosed from looking at the body
10 at the time of the autopsy. In other words, the autopsy
11 fails to reveal any life threatening major injury that
12 caused his death and also failed, it did not uncover any
13 disease to cause him to die suddenly and unexpectedly but
14 having eye witness accounts of a man who was overweight,
15 walking, talking, alert and awake, who died like a light
16 gets turned off, specifically the a heart suddenly stops
17 and there is no other explanation. So the autopsy findings,
18 rather the lack of findings and the eye witness accounts as
19 well as EKG tracing, all significant, all points to him
20 having died a cardiac death following exertion associated
21 with physical altercation.

22 Q How does the body Doctor Milewski, handle stress,
23 altercations like what's going on in the body chemically?

24 A We're programmed for what happens within our bodies
25 physiologically, each one of us is programmed. If an

1 individual perceives stress or feeling fearful, the
2 subconscious way the brain is already sending a signal to
3 the adrenal glands to fight fear. So if you perceive on the
4 street a threat, you're going to fight or run away from the
5 fight. Both things require your muscles to have more oxygen
6 and more calories to determine energy to go ahead and do
7 what's required, a lot of physical activity to fight or
8 flight. So it disrupts energy in every organ and your
9 muscles start getting more blood so more cells are revved
10 up, but more engaged, and other activities get more oxygen
11 because the blood is being shifted. Your muscle and heart
12 rate goes up because of more blood, blood delivers on a
13 faster schedule to your muscles and cells are more active
14 to metabolite, sends the rate higher, more energy for fight
15 or flight. You either stay and fight for the finish or you
16 have to digress and the ability to perceive pain continues
17 to move with fight or flight regarding sometimes the injury
18 that you may have, because you have diminished capacity to
19 perceive pain, so psychologically it makes you a little
20 anxious and that cascades. So perception is really
21 important here to program in place whether or not to
22 perceive the risk. There has to be evidence of an
23 altercation with a police officer or between the police
24 officers and Mr. Lazo had ended some half hour perhaps
25 prior to his becoming unresponsive in the precinct.

1 Q Could you describe how, perhaps that acute stress response
2 has any significance to post-altercation with Mr. Lazo?

3 A Sure, epinephrine goes up in the face and body and also can
4 drop very quickly and after the threat is removed, it also
5 lingers in the system for a prolonged period of time. So
6 epinephrine lingering in the body beyond, past the period
7 of time of physical activity so also is very much directly
8 related to how a person perceives the risk, the fear and
9 feeling the stress themselves.

10 Q Mr. Lazo found himself at the precinct and charged with two
11 Class B felonies following this altercation. Is it possible
12 that Mr. Lazo's stress level and his acute stress response
13 continued beyond the time frame of the actual physical
14 altercation?

15 A Sure because the stress relates to something perceived as a
16 threat is very much related to the individual at the time
17 if there was what seemed to be something that causes fear
18 or a threat and stress somebody may not even physically
19 active still be engaged and epinephrine and adrenalin in
20 the body can have a deleterious effect. For example,
21 people under the influence of a drug, it may affect the
22 heart for some heart disease and then the heart pushes the
23 blood expects the heart to work harder to prepare the body
24 for any compromise.

25 Q So, if I understand you correctly, Mr. Lazo had no

1 significant life threatening disease?

2 A That's correct.

3 Q He had no significant life threatening disease that
4 affected his heart?

5 A No.

6 Q He was 5'6" and 238 pounds?

7 A Yes and that put him highly or morbidly obese. I think
8 also, he was at risk being in intensive exertion
9 physically. So to me, that was significant.

10 Q With regard to the blunt impact trauma observed by you, is
11 it fair to say that none of these blunt impact traumas were
12 life threatening?

13 A None of them.

14 Q Either taken by themselves or taken altogether?

15 A That's right.

16 Q Was evidence of multiple blunt impact your observations?

17 A Yes, they were to the head, torso and extremities.

18 Q Taken alone or combined they were not of the severity to
19 cause Mr. Lazo's death?

20 A That's correct.

21 Q They were all superficial, no underlying injury to skeleton
22 or organs of the body of Mr. Lazo?

23 A That's correct.

24 MR. COLLINS: I don't believe I have any further
25 questions of Dr. Milewski. Do any of the jurors have

1 any questions?

2 GRAND JUROR: Would it be normal procedure to be
3 selected to do an autopsy or did it have something to
4 do with the fact that the police officers were
5 involved, that they went to the Chief Medical Examiner
6 versus one of your co- workers?

7 THE WITNESS: I was on call that weekend. I inherited
8 the case as a rotator on the schedule.

9 GRAND JUROR: Do you do a background check on his
10 physical history from a family doctor, do you get any
11 medical records, do you have any kind of check on his
12 medical records with his doctor of what he had, if he
13 had a doctor?

14 THE WITNESS: Investigators for the Medical Examiner or
15 physician's assistant, for that reason they interview
16 family members and ask about medical history. We do
17 not know off the top of our head which doctors or
18 hospital to check with so they do a review and then
19 the family came and they ask the family if there was
20 any significant medical history and they said he was
21 healthy and offered no other medical history.

22 MR. COLLINS: Let me interrupt you for just one second
23 Doctor Milewski.

24 Q Could you tell us or estimate for us approximately how many
25 autopsies you have been involved in, either conducting or

1 assisting in?

2 A Many thousands, several thousands.

3 GRAND JUROR: Just to clarify, as far as you know Mr.
4 Lazo was pronounced dead by the Emergency Room doctor
5 as soon as he arrived?

6 THE WITNESS: There was an initial assessment and
7 pronouncement within one-half hour to forty minutes,
8 from my memory.

9 MR. COLLINS: Does that answer your question, ma'am?

10 GRAND JUROR: Yes, thank you.

11 GRAND JUROR: Stress is a risk factor and if you're
12 obese, that's a factor?

13 THE WITNESS: It is my opinion he goes into this
14 stressful event with obesity as being his main risk
15 factor, a potential risk factor.

16 GRAND JUROR: Thank you.

17 GRAND JUROR: The autopsy, you said you looked at the
18 brain. Was there any contusion or any other trauma in
19 the back of the head, did you notice a concussion?

20 THE WITNESS: To answer your question, when we examine
21 the brain we peel the scalp back. That's important to
22 do because if you bruise the scalp, you don't because
23 there's layers, you peel the scalp and it reveals
24 seven separate areas of bruising, bruising back here
25 (indicating) back, two points of injury, there was no

1 fracture, no bleeding around the brain. The brain is
2 very carefully examined and there may be very subtle
3 things that are found but there was no abnormality in
4 the brain and the issue with concussion, that's purely
5 an electrical event. In other words, a concussion is
6 described as a loss of unconsciousness that does not
7 have a sort of tissue based abnormality. If you have a
8 concussion, most of the times they're not fatal.

9 People lose consciousness and you may have an altered
10 mental state and they recover and they have an MRI
11 scan, it will be absolutely normal because it's purely
12 an electrical event. There is no way to diagnose a
13 concussion in the brain because it's electrical with
14 no physical presence of tissue to look at.

15 GRAND JUROR: No swelling of the brain?

16 THE WITNESS: No.

17 GRAND JUROR: You stated the bruising to the right
18 temple could have been made by a flashlight, could it
19 also be caused by him hitting a rock in the ground or
20 curb because there was a curb by the grassy part and
21 sometimes an injury could be caused by that and not a
22 flashlight?

23 THE WITNESS: Yes, any blunt surface the body struck.
24 It could be both because sometimes you have two things
25 happen. The body moves, the surface moves, could cause

1 bruises. So that is another potential explanation why
2 the bruises may be there.

3 GRAND JUROR: How about the desk?

4 THE WITNESS: Sure, that could be an explanation.

5 MR. COLLINS: Any further questions of Dr. Milewski?

6 GRAND JUROR: So is it your opinion none of those
7 bruises were life threatening to him?

8 THE WITNESS: No, bruises are not life threatening.

9 GRAND JUROR: The hospital you work at?

10 THE WITNESS: We have the Medical Examiners Office in
11 Hauppauge.

12 GRAND JUROR: Are you employed by the State?

13 THE WITNESS: No, I'm at the County level.

14 Q Do you work for the Police Department?

15 A No.

16 Q Do you work for the DA's Office?

17 A No.

18 MR. COLLINS: There being no further questions for Dr.
19 Milewski, thank you very much. You're excused.

20 (No further questions by any members of the Grand
21 Jury)

22 (Recess of Investigation into the Death of
23 Kenny Lazo)

24 (Continuation of Investigation into the death of
25 Kenny Lazo)

1 MR. COLLINS: Good afternoon everyone. At this point it
2 is my intention to charge you on the law with regard
3 to this case that you heard over the last two weeks. I
4 believe this case has been consumed pretty much by all
5 of these four days of testimony last Monday, last
6 Wednesday, last Thursday and today.

7 Over those four days you heard some fourteen
8 witnesses and there were sixty some odd exhibits
9 entered into evidence and some of various subdivisions
10 so maybe as much as one hundred pieces, so to speak, I
11 expect, that have been received in evidence and are
12 available in the course of your deliberations. You
13 don't need to ask my permission to look at them when I
14 leave the room during your deliberations and at any
15 point, if you need assistance during the course of
16 your deliberations with any of the equipment, feel
17 free to knock on the door should you need to use any
18 of it and also, with regard to any of the fourteen
19 witnesses.

20 Should there be a consensus amongst yourselves by
21 conducting a vote of twelve or more to hear a
22 particular witness or a portion of the witness's
23 testimony I will make that available to you should you
24 require it. Mrs. Kiefer is here and also Ms.
25 Ruthowski and Mr. Galante, the two other reporters who

1 took a portion of this case will be available should
2 you need any of them to readback. Again, with regard
3 to any readback, I would request that you discuss that
4 amongst yourselves and decide as a group whether or
5 not you need any individual's testimony read back and
6 I would request that you take a vote and have a
7 discussion amongst yourselves before you let me know
8 if it is necessary to have something read back to you.

9 There are three potential targets for your action
10 in this particular Grand Jury. They are Detective John
11 Newton, Sergeant James Scimone and Police Officer
12 William Judge. If you recall they were the three
13 officers that testified under a waiver of immunity
14 before you.

15 Any of the other witnesses who testified in this
16 matter, if you recall, no one else was requested to
17 waive immunity. Everyone else who testified before you
18 testified as a regular witness. Therefore, since
19 immunity in a criminal charge implicates that
20 particular incident as to those three persons, it is
21 against them and I'll ask you to consider charges as
22 to Detective John Newton, Sergeant James Scimone and
23 Police Officer William Judge.

24 The charges I'm going to ask you to consider
25 thereafter will be defined for you:

1 Manslaughter in the First Degree which is Penal
2 Law 125.20(1).

3 Assault in the Second Degree which is Penal Law
4 120.05(2).

5 You are to consider those charges as against each
6 officer individually, and acting in concert as well
7 and I will read to you article 20 of the Penal Law
8 which defines accomplice liability and acting in
9 concert will be defined for you when I give you the
10 charges for those particular crimes and the elements.

11 There are three potential targets and two
12 potential crimes. That means that there at least six
13 individual votes, each officer for each crime so that
14 will be six votes also there's also further elements
15 to this voting process which I will get to. The
16 officers involved have claimed through their testimony
17 that they were justified in their actions that they
18 took this particular night regarding Kenny Lazo and
19 his death. Justification is commonly called self-
20 defense and there are a number of theories of self-
21 defense that are available to the officers in this
22 particular instance. I will read you the legal
23 definitions and help define for you those particular
24 elements of self-defense and how you are to apply them
25 in this particular case, should you find it necessary

1 to apply them.

2 The voting is going to go in stages with regard to
3 the crimes presented. You will first make a
4 determination as a group whether or not there is
5 reasonable cause to believe that the elements of those
6 crimes did, in fact, exist or if there is reasonable
7 cause to believe that the elements have been satisfied
8 by the testimony. Should you find that any elements of
9 the crimes defined for you is not present, then you
10 may vote a no-true-bill for this particular crime and
11 that goes as to both Manslaughter and Assault in the
12 Second Degree.

13 If you find as a group and you make a finding that
14 the elements are, in fact, present and have been
15 established to your satisfaction, then you would take
16 a second step of consideration whether or not the
17 officers were justified in committing those acts.

18 I will give you the parameters of justification.
19 There are going to be two basic theories of
20 justification presented. The first would be called
21 justification in defense of another person. The second
22 theory of justification is just justification or self-
23 defense in the course of making an arrest. So there
24 are two separate theories of justification.

25 I will present justification defense of another

1 person and justification in the course of making an
2 arrest. There are going to be a number of terms that
3 are going to be used with frequency throughout my
4 defining these particular laws to you.

5 I'm going to try to give you the definitions up
6 front, the terms will be:

7 "Intent"

8 "Serious physical injury"

9 "Deadly physical force"

10 "Physical injury"

11 Again, I spoke of "acting in concert"

12 "Dangerous instrument" and "Reasonably believes"

13 I'll go ahead and define all of those definitional
14 sections for you first and then we'll define the
15 crimes that I want to ask you to consider and their
16 elements and then I will give you the law of
17 justification as it may pertain to this case.

18 Are there any questions on anything I have done
19 thus far?

20 (Collective Grand Jury response, negative)

21 MR. COLLINS: I'll read some of the definitional
22 sections first.

23 The first definitional section, the first term is
24 "physical injury" which is defined in Article 10,
25 subdivision 9.

1 "Physical injury" means impairment of physical
2 condition or substantial pain.

3 That is the entire definition of physical injury
4 in the New York State Penal Law, impairment of
5 physical condition or substantial pain.

6 "Serious physical injury" is defined in
7 subdivision 10 of that same section.

8 "Serious physical injury" means physical injury
9 which creates a substantial risk of death or which
10 causes death or serious and protracted disfigurement,
11 protracted impairment of health or protracted loss or
12 impairment of the function of any bodily organ.

13 I will read that again.

14 "Serious physical injury" means physical injury
15 which creates a substantial risk of death or which
16 causes death or serious and protracted disfigurement,
17 protracted impairment of health or protracted loss or
18 impairment of the function of any bodily organ.

19 "Deadly physical force" is defined in subdivision
20 11 of that same section.

21 "Deadly physical force" means physical force
22 which, under the circumstances in which it is used, is
23 readily capable of causing death or other serious
24 physical injury.

25 "Dangerous instrument" is also defined in that

1 section, subdivision 13.

2 "Dangerous instrument" means any instrument,
3 article or substance which includes a vehicle as that
4 term is used or defined in this section which, under
5 the circumstances in which it is used, attempted to be
6 used, or threatened to be used, is readily capable of
7 causing death or other serious physical injury.

8 Okay again, "dangerous instrument" means any
9 instrument article or substance which, under the
10 circumstances in which it is used or attempted to be
11 used, or threatened to be used, is readily capable of
12 causing death or other serious physical injury.

13 The Penal Law also defines "intentional conduct"
14 and that is article 15.05(1).

15 A person acts "intentionally" with respect to a
16 result or to conduct described by a statute defining
17 an offense when his conscious objective is to cause
18 such result or to engage in such conduct.

19 "Intentionally." A person acts "intentionally"
20 with respect to a result or to conduct described by a
21 statute defining an offense when his conscious
22 objective is to cause such result or to engage in such
23 conduct.

24 "Reasonably believes" the term will be used on
25 several occasions defined in the Penal Law. When the

1 term "reasonably believes" is used, reasonably
2 believes is a two pronged test. When the Penal Law
3 uses the term "reasonable belief" or "reasonably
4 believes" there is a two step process that must be
5 engaged by you.

6 First, the subject must have actually believed,
7 when they say they believed. In other words, if a
8 person believes that someone was about to use physical
9 force against them, the defendant or subject must have
10 actually believed that someone was about to use
11 physical force against him or her or someone else and
12 it is the subject's own use of physical force that is
13 necessary to defend himself or herself or others from
14 it.

15 The second stage of "reasonable belief" would it a
16 reasonable person in the subject's position, knowing
17 what the subject knew believe the same circumstances,
18 would a reasonable person have the same belief.

19 So it's a two step process in determining whether
20 someone reasonably believes something is going to
21 happen.

22 The first step is to find factually the person
23 claims that belief, actually believed it.

24 The second step to the process is the reasonable
25 person standard, not only in that the person actually

1 believed it but would a reasonable person placed in
2 the same circumstances as the subject have had those
3 same beliefs based on all of the circumstances as
4 known to the subject.

5 So the first objective standard, did the person
6 actually believe what they say they believe and the
7 second is a more subjective standard, what we call the
8 "reasonable person standard" would a reasonable person
9 in the same circumstances also have been justified
10 having that belief based on everything that was known.

11 You have those definitions and you are going to
12 hear those terms used defining the statute and I'll
13 gladly re-define any definitions and answer any of
14 your questions when I'm done but now what I'd like to
15 do is progress to the actual sections of law
16 themselves.

17 Article 20 of the Penal law defines accessorial
18 liability or accomplice liability for conduct of
19 another and you may be familiar with it now as acting
20 in concert.

21 There are occasions in criminal law where someone
22 can actually be held accountable for actions of
23 another and the Penal Law defines those occasions.

24 It is entitled, "Criminal liability for conduct of
25 another." Again, "target officers", they alleged both

1 to have acted both individually and in concert for
2 actions of one of their fellow officers in some of the
3 circumstances described.

4 Section 20 of the Penal Law: When one person
5 engages in conduct which constitutes an offense,
6 another person is criminally liable for such conduct
7 when, acting with the mental culpability required for
8 the commission thereof, he solicits, requests,
9 commands, importunes or intentionally aids such person
10 to engage in such conduct.

11 I'm now going to define for you Manslaughter in
12 the First Degree.

13 Manslaughter in the First Degree reads as follows and
14 this is subdivision (1) of Penal Law 125.20.

15 A person is guilty of Manslaughter in the First
16 Degree when, with intent to cause serious physical
17 injury to another person, he causes the death of such
18 person, okay with intent to cause "serious physical
19 injury" to another person he causes the death of such
20 person.

21 So the definitions I have gave you previously of
22 "intentional conduct" and serious physical injury as I
23 previously defined for you, are in the Manslaughter in
24 the First Degree, with intent to cause serious
25 physical injury to another person, he causes the death

1 of such person or a third person.

2 Assault in the Second Degree is defined in Penal
3 Law 120.05(2).

4 A person is guilty of Assault in the Second Degree
5 when, with intent to cause physical injury to another
6 person, he or she causes such injury to such person by
7 means of a dangerous instrument, with intent to cause
8 physical injury to such person by means of a dangerous
9 instrument.

10 I have already defined for you "physical injury,"
11 "intent" and "dangerous instrument" for you.

12 I'm going to ask that you consider each of those
13 crimes as against the three officers again, that will
14 require six votes amongst yourselves, whatever fashion
15 you see fit you must then determine whether or not
16 there is reasonable cause to believe these elements as
17 I have given them to you exist and that these are the
18 individuals who committed those acts.

19 If you find, with regard to any of the officers,
20 and any of the crimes, that in fact, reasonable cause
21 to believe that exists, that the act was committed by
22 that particular "target" then there will be a second
23 step you must take.

24 If you find that the elements do not exist, then
25 you may vote a no-true-bill. If you find they do

1 exist, then you may take a further step now, of
2 considering "justification" or "self-defense." There
3 are several definitions outlined in Penal Law Article
4 35.

5 Article 35 defines the defense of "justification"
6 and Section 35 itself, reads as follows:

7 In any prosecution for an offense, justification,
8 as defined in the ensuing sections, Defense Section
9 35.05 deals with "justification," generally unless
10 otherwise limited by the ensuing provisions of this
11 article defining justifiable use of physical force,
12 conduct which would otherwise constitute an offense is
13 justifiable and not criminal when such conduct is
14 required or authorized by law or by a judicial decree,
15 or is performed by a public servant in the reasonable
16 exercise of his official powers, duties or functions;
17 or such conduct is necessary as an emergency measure
18 to avoid an imminent public or private injury which is
19 about to occur by reason of a situation occasioned or
20 developed through no fault of the actor and which is
21 of such gravity that, according to the ordinary
22 standards of intelligence and morality, the
23 desirability and urgency of avoiding such injury
24 clearly outweigh the desirability of avoiding the
25 injury sought to be prevented by the statute defining

1 the offense. The necessity and justifiability of such
2 conduct may not rest upon considerations pertaining
3 only to the morality and advisability of the statute,
4 either in its general application or with respect to
5 its application to a particular class of cases arising
6 thereunder.

7 Whenever evidence relating to the defense of
8 justification under this subdivision is offered by the
9 defendant, the court shall rule, as a matter of law,
10 whether the claimed facts and circumstances would, if
11 established, constitute a defense.

12 That's just very general language. The thrust of
13 the language, there are situations where conduct that
14 may otherwise be criminal is justified under the law
15 and that segment in general, we'll get to the
16 particulars of justification and it's application to
17 this particular case, should you find reasonable cause
18 to believe that justification factors into this case.

19 "Justification," that's Section 35.10, it is
20 deemed use of physical force generally.

21 I'm going to read only one subdivision. That is
22 Penal Law Section 35.10(6). The use of physical force
23 upon another person which would otherwise constitute
24 an offense is justifiable and not criminal under any
25 of the following circumstances.

1 I'll now go to subdivision (6):

2 A person may use physical force upon another
3 person in self-defense or defense of a third person,
4 or in defense of premises, or in order to prevent
5 larceny of or criminal mischief to property, or in
6 order to affect an arrest or prevent an escape from
7 custody. Whenever a person is authorized by any such
8 provision to use deadly physical force in any given
9 circumstance, nothing contained in any other such
10 subdivision may be deemed to negate or qualify such
11 authorization.

12 That's the general section for the use of physical
13 force. Penal Law Section 35.15 is entitled,
14 "Justification: Use of physical force in defense of a
15 person." Now we're going to get more particulars.

16 A person may, subject to the provisions of
17 subdivision (2), we'll get to that, use of physical
18 force upon another person when and to the extent he or
19 she reasonably believes such to be necessary to defend
20 himself o herself or a third person from what he or
21 she reasonably believes to be the use or imminent use
22 of unlawful physical force by such other person
23 unless: the latter's conduct was provoked by the actor
24 with intent to cause physical injury to another person
25 or the actor was the initial aggressor.

1 Subdivision (2) of this section deals with the use
2 of deadly physical force. Subdivision (2) reads as
3 follows:

4 A person may not use deadly physical force upon
5 another person under circumstances specified in
6 subdivision (1). Okay, a person may not use deadly
7 physical force upon another person under circumstances
8 specified in subdivision (1) unless the actor
9 reasonably believes that such other person is using or
10 is about to use deadly physical force. Even in such
11 case however, the actor may not use deadly physical
12 force if he or she knows that with complete personal
13 safety to oneself and others, he or she may avoid the
14 necessity of so doing by retreating, except that the
15 actor is under no duty to retreat if he or she is a
16 police officer or peace officer or a person assisting
17 a police officer or peace officer at the latter's
18 direction. Pursuant to section 35.27 talks about use
19 of physical force in resisting arrest, Penal Law
20 Section 35.27:

21 A person may not use physical force to resist an
22 arrest whether the arrest was authorized or
23 unauthorized, which is being effected or attempted by
24 a police officer when it would reasonably appear that
25 the latter is a police officer or police officers.

1 Again, Section 35.27: A person may not use
2 physical force to resist an arrest whether the arrest
3 was authorized or unauthorized, which is being
4 affected or attempted by a police officer when it
5 would reasonably appear that the latter is a police
6 officer or police officers.

7 Now Section 35.30, this is a different type of
8 justification that's just physical force used in
9 making an arrest or preventing an escape. So Section
10 35.15 is justification in defense of another or third
11 person.

12 Now this justification, use of physical force in
13 making an arrest or in preventing an escape, that is
14 Penal Law 35.30. A police officer or peace officer in
15 the course of affecting or attempting to effect an
16 arrest or of preventing or attempting to prevent the
17 escape from custody of a person whom he or she
18 reasonably believes to have committed an offense, may
19 use physical force when and to the extent he or she
20 reasonably believes such to be necessary to effect the
21 arrest or to prevent an escape from custody or in self
22 based defense or to defend a third person from what he
23 or she reasonably believes to be the imminent use of
24 physical force; except that deadly physical force may
25 be used for such purposes only when he or she

1 reasonably believes that regardless of the particular
2 offense which is the subject of the arrest or
3 attempted escape, the use of deadly physical force is
4 necessary to defend a police officer or another person
5 from what the police officer reasonably believes to be
6 the use or imminent use of deadly physical force.

7 I'll read that whole section again, 35.30 (1)(a)
8 and (1)(c).

9 A police officer or peace officer in the course of
10 affecting or attempting to effect an arrest or of
11 preventing or attempting to prevent the escape from
12 custody of a person whom he or she reasonably believes
13 to have committed an offense, may use physical force
14 when and to the extent he or she reasonably believes
15 such to be necessary to effect the arrest or to
16 prevent an escape from custody or in self based
17 defense or to defend a third person from what he or
18 she reasonably believes to be the imminent use of
19 physical force; except that deadly physical force may
20 be used for such purposes only when he or she
21 reasonably believes that regardless of the particular
22 offense which is the subject of the arrest or
23 attempted escape, the use of deadly physical force is
24 necessary to defend a police officer or another person
25 from what the police officer reasonably believes to be

1 the use or imminent use of deadly physical force.

2 I want to go back to "reasonably believes" and
3 I'll give you that definition one more time.

4 The determination of whether a person reasonably
5 believes physical force to be necessary to defend
6 himself or herself or someone else from what he or she
7 reasonably believes to be the use or imminent use of
8 physical force by another individual requires the
9 application of a two part test.

10 That test applies to this case in the following
11 way.

12 First, a subject must have actually believed, not
13 someone was using or was about to use physical force
14 against him or someone else and that his own use of
15 physical force was necessary to defend himself or
16 someone else from it.

17 And second, a reasonable person in the subject's
18 position, knowing what the subject knew and being in
19 the same circumstances would have had those same
20 beliefs. It does not matter that the subject was or
21 may have been mistaken in his or her belief provided
22 that such belief was both honestly held and
23 reasonable.

24 Alright Ladies and Gentlemen, that is the law as
25 defined in the application sections of the Penal Law

1 and Criminal Procedure Law.

2 I will go through the voting process with you one
3 more time, briefly.

4 You have two crimes to consider and you have three
5 people against whom to consider those crimes. I will
6 ask you to consider them separately and as a group you
7 vote separately as to each potential target and crime
8 you are considering.

9 So with regard to Detective Newton, you will
10 consider whether or not the elements are present to
11 establish Manslaughter in the First Degree, and also
12 for Assault in the Second Degree. You do that with
13 each of the officers.

14 In the event that you find that the elements have
15 not been established to your satisfaction, then you
16 may vote a no-true-bill as to a particular target and
17 that particular crime.

18 Should you vote a no-true-bill with regard to the
19 establishment of the elements, you need go no further.

20 With regard to considering justification, if you
21 find that the elements of the crime have been
22 established as to each and any overall of the
23 potential targets, you then take an additional step of
24 considering justification, both justification defense
25 of a person or third person and justification in the

1 course of making an arrest or preventing an escape.

2 Should you find the officer, again if you find the
3 elements have been established was justified under
4 either theory, in defense of a person or third person
5 or in the course of making an arrest or preventing an
6 escape, if you find that has been established to your
7 satisfaction, you may vote a no-true-bill based on
8 justification as to the officer and that particular
9 crime.

10 Should you find that the elements have been
11 established and the officer in question was not
12 justified in his actions, then you may vote a true
13 bill to this particular crime and those particular
14 officers.

15 Is this process I have given to you proper and
16 clear?

17 (Collective Grand Jury response, affirmative)

18 MR. COLLINS: If there are no further questions, myself
19 and the reporter will leave the room and all the
20 evidence is present here in the room with you and I
21 believe the secretary has available her list of
22 evidence that may assist you in finding anything in
23 particular that you are looking for and in the event
24 you have any problem or any questions, Myrtle will be
25 here for any readback at your beck and call.

EXHIBIT F



Suffolk County District Attorney's Office

Thomas J. Spota, District Attorney

[Home](#)

November 3, 2008

Message From The DA

No indictment following death investigation

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A Suffolk County Grand Jury returned a "no true bill" in the investigation of the death of Kenneth Lazo of Bay Shore. The finding means that the grand jury declined to charge the Suffolk police officers involved in a roadside physical altercation with the suspect on April 12, 2008.

Suffolk County Medical Examiner Yvonne Milewski, reported last summer that it was her medical determination that Lazo had a "sudden cardiac death" that followed "exertion associated with prolonged physical altercation with multiple blunt impacts." The medical examiner reported no evidence of broken bones or damage to internal organs, citing obesity as a contributory cause of death. Lazo was 5 foot 6-inches tall and weighed 238 pounds.

The police investigation of this matter revealed the following: On the night of April 12 during an investigation of street level drug dealing in the third precinct, detectives observed Lazo participate in a hand-to-hand drug transaction. Uniformed patrol officers were called in to pull the suspect over for arrest. Lazo stopped his vehicle on the shoulder of the northbound Robert Moses Causeway exit to the Southern State Parkway.

An altercation began behind Lazo's car during questioning when he suddenly elbowed a detective and attempted to run from the scene. After tackling Lazo, two police officers and a detective struggled with the suspect on the shoulder of the highway within a few feet of speeding traffic. Lazo grasped at and succeeded in putting his hand on one of the police officer's holstered service weapon. As police fought for several minutes to regain control of the situation, necessary force was used and the suspect was struck multiple times with flashlights before the officers were able to restrain and handcuff him for transport to the third precinct.

The incident was observed by both civilians and police officers. Recordings of 911 calls made by two motorists who drove by the scene and saw the suspect fighting with police on the shoulder of the highway confirmed eyewitness accounts.

The arresting police officers recovered more than one-half ounce of crack and powdered cocaine from Lazo. Sixteen separate packets of crack and twelve packets of powdered cocaine were concealed in his clothing and police recovered approximately \$2,500, in \$100, \$20 and \$10 denominations, and three cell phones, from the suspect's car.

Lazo collapsed approximately a half-hour after being transported to the Suffolk County police department's third precinct stationhouse. Despite resuscitation efforts by police trained as EMT's and rescue personnel, he was pronounced dead after being rushed to the emergency room of Southside Hospital in Bay Shore.

The officers involved in the struggle with Lazo waived immunity and testified before the grand jury. The grand jury reviewed more than 60 exhibits during the

presentation.

In August, an attorney representing the Lazo family in a civil lawsuit against Suffolk County declined an offer from the district attorney's office to include the family's privately hired forensic expert, or any other relevant witnesses, in the presentation of evidence to the grand jury.

District Attorney Thomas Spota said the presentation of evidence gathered during the police investigation was comprehensive. "Great care was taken to present the facts of this case in a clear and deliberate manner and we will abide by the grand jury's decision," DA Spota said.

The US Attorney for the Eastern District of New York had previously deferred investigation of this matter to the district attorney's office.

###

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EXHIBIT G

POLICE DEPARTMENT COUNTY OF SUFFOLK, NEW YORK

INTERNAL CORRESPONDENCE

TO: Inspector David Ferrara
 Commanding Officer Internal Affairs Bureau
 FROM: Captain Christopher Hatton
 Internal Affairs Bureau.
 SUBJECT: Internal Affairs Case # 08-0254i

DATE: 2/10/2009

COPY TO:

I have reviewed the attached investigative report of Lt. Joseph Capolino that addresses allegations of **FALSE ARREST, EXCESSIVE FORCE** and **FAIL TO PERFORM DUTY** against Sgt. James Scimone #983/330, Det. John Newton #1096/3130 and P.O. William Judge #5390/330. These allegations were received in a notice of claim filed o/b/o Mr. Kenneth Lazo (deceased) by his family.

On 04/12/08 the involved officers arrested Lazo on drug charges after a violent physical confrontation on the Southern State Parkway. Lazo was transported from the scene directly to the Third Squad for processing. Shortly after arrival at the precinct, Lazo went into cardiac arrest. Numerous officers immediately rendered aid by performing CPR and using an automatic external defibrillator on Lazo. Lazo was transported via ambulance to a hospital where he was pronounced dead. Lazo's family alleges he was falsely arrested, subjected to excessive force and denied appropriate medical attention.

Lt. Capolino's investigation revealed there was probable cause to arrest Lazo and the force used to effect the arrest was legal, proper and necessary. Officers rendered immediate medical aid to Lazo when he suffered cardiac arrest. Lt. Capolino therefore recommends the allegations of **FALSE ARREST, EXCESSIVE FORCE** and **FAIL TO PERFORM DUTY** be classified as **EXONERATED**. I concur with his conclusion.

This investigation revealed Lazo suffered several injuries during his initial confrontation with police. These injuries consisted of contusions around his eyes and an abrasion on his face. Lt. Capolino has determined Sgt. Scimone failed to ensure that Lazo was transported from the scene directly to a hospital for treatment. He recommends an allegation of **RULES AND PROCEDURES VIOLATION** against Sgt. Scimone be classified as **SUBSTANTIATED**. I concur.

Respectfully submitted,

CH Hatton
 Christopher Hatton
 Captain
 Internal Affairs Bureau

COPY

EXHIBIT H

POLICE DEPARTMENT COUNTY OF SUFFOLK, NEW YORK

INTERNAL CORRESPONDENCE

TO: Inspector David Ferrara
Commanding Officer, Internal Affairs Bureau
FROM: Lieutenant Joseph Capolino
Internal Affairs Bureau
SUBJECT: INTERNAL AFFAIRS BUREAU CASE #2008-254i
(NOTICE OF CLAIM)

DATE: 2/9/09

COPY TO:

SOURCE:

Alert Report #2007-0254i

Att. # 1

CLAIMANTS:

Name: Family of Kenneth J. Lazo (deceased) D.O.B. 12/30/83
Address: 2 Waldbridge Ave. Bayshore, NY
Telephone: 631 968-7993 Race: Hispanic

Attorneys:

1. Schoenfeld, Schoenfeld & Pincus, P.C.
Attorney Telephone: 631 673-5004
2. Frederick K. Brewington
Attorney Telephone: 516 489-6959

NATURE:

A Notice of Claim dated April 19, 2008, (Attachment # 2) was served upon the Department by the Estate of Mr. Kenny Lazo. The Notice of Claim asserts that at approximately 2030 hours on April 12, 2008, the decedent Mr. Lazo, was "wrongfully accused, abused, harassed, battered, searched and imprisoned" by unspecified members of this Department. The subject Notice of Claim also indicates that Mr. Lazo sustained severe, permanent and painful physical damages and injuries including death. Additionally, said Claim alleges that members of this Department failed to render medical assistance to the decedent.

Said allegations are characterized as False Arrest, Excessive Force and Fail to Perform Duty.

**INTERNAL AFFAIRS BUREAU CASE #08-254i
(NOTICE OF CLAIM)**

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INVOLVED OFFICER:

Name: James Scimone Rank: Sergeant Shield: 983 Command: 330 Sqd.:T2

Specific Allegation:

False Arrest

Excessive Force

Fail to Perform Duty

Rules and Procedures Violation

(Chapter 2, Section 11, V.I. C.1)

Disposition:

Exonerated

Exonerated

Exonerated

Substantiated

Involved Officer's Immediate Supervisor: Lt. Robert Williams

Name: John Newton Rank: Detective Shield: 1096 Command: 3130 Sqd.:T3

Specific Allegation:

False Arrest

Excessive Force

Fail to Perform Duty

Disposition:

Exonerated

Exonerated

Exonerated

Involved Officer's Immediate Supervisor: D/Sgt. John Diffley 542/3130

Name: William Judge Rank: Police Officer Shield: 5390 Command: 330 Sqd.:T2

Specific Allegation:

False Arrest

Excessive Force

Fail to Perform Duty

Disposition:

Exonerated

Exonerated

Exonerated

Involved Officer's Immediate Supervisor: Sgt. James Scimone

**INTERNAL AFFAIRS BUREAU CASE #08-254i
(NOTICE OF CLAIM)**

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INVESTIGATION: The investigation included the following steps:

- A review of Department Records
- A review of Communications Recordings
- E-mail; Transaction Analysis
- Interview and/or statement of complainants/witnesses
- Medical Records
- Internal Correspondences
- Photographs
- Medical Examiners Report

DEPARTMENTAL RECORDS:

Duty Chart PDCS-2004f- April 12, 2008 (3x11) Third Precinct	Att. # 3
Third Squad Tour Report- April 12, 2008 (5x1)	Att. # 4
Third Precinct Patrol Tour Report- April 12, 2008 (3x11) Third Precinct	Att. # 5
Duty Officer's Confidential Log Report – Death Investigation (April 12, 2008 to April 13, 2008)	Att. # 6

SCPD Incident Report PDCS-1099 CG (2008-185917) Att. # 7

Det. John Newton 1096/3130 on 5/1/08 prepared the above report and indicated the following:

On 4/12/08, he and Det. Christopher Talt of the Third Pct. NESOT were conducting a drug investigation in the West Islip area. Det. Talt, in a separate unmarked police vehicle, witnessed an unknown male operating a dark blue Cadillac conduct a hand-to-hand transaction with the operator of a second vehicle. Det. Newton, assisted by Cope officers Sgt. James Scimone and P.O. William Judge, conducted a traffic stop of the subject Cadillac at the entrance of the Southern State Parkway in Bayshore. *(Det. Talt did not participate in the traffic stop of Mr. Lazo).*

INTERNAL AFFAIRS BUREAU CASE #08-2541
(NOTICE OF CLAIM)

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The operator of the Cadillac, identified as Kenny Lazo, attempted to flee on foot from the scene. The officers engaged in a physical struggle with Mr. Lazo and eventually subdued him. Another assisting officer at the scene, PO Joseph Link, recovered a clear plastic bag containing what appeared to be crack/cocaine from Mr. Lazo. PO Link then transported Mr. Lazo to the Third Precinct. At some point after arriving at the precinct, PO Joseph Link recovered another clear plastic bag containing what appeared to be crack/cocaine from Mr. Lazo.
(The officers subsequently recovered \$2,252.00 in U.S. Currency from Mr. Lazo).

Property Section Invoice PDCS-4201-1 (CC# 2008-185917)
Suspected Controlled Substances

Att. # 8

Det. Christopher Krucher #1314 invoiced two quantities of suspected controlled substances possessed by Mr. Lazo on April 12, 2008. The material consisted of white power and an off-white rock like substance.

It should be noted that the substances recovered from Mr. Lazo were discovered packaged in a manner characteristic of possessing them to sell.

Evidence Analysis Request PDCS-3220-9c (2008-185917)

Att. # 9

On 4/13/08, Det. Christopher Krucher #1314 requested that the S.C. Crime Lab conduct quantitative and qualitative tests, on the suspected substances recovered from Mr. Lazo on April 12, 2008.

S.C. Crime Laboratory Report- (CC# 2008-185917)

Att. # 10

With respect to the requested analysis, Forensic Scientist Vorathip Chinookoswong submitted a report dated May 23, 2008. The findings indicate that analysis of the suspected substances revealed the presence of cocaine in each submitted quantity.

The report further indicates Item # 1 contained sixteen bags and Item # 2 seven bags.

INTERNAL AFFAIRS BUREAU CASE #08-254i
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Report of Inmate Death to State Commission of Correction Att. # 11

On 4/13/08, D/Sgt. Edward Fandry notified the New York State Commission of Corrections regarding Mr. Lazo's death while in this Department's custody.

Use of Force Report PDCS-1040c (2008-185633) UOF (2008-0231) Att. # 12

Lt. Robert Williams/310/3 on 4/13/08 prepared the above report and indicated the following:

On 4/12/08, at eastbound Southern State Parkway and Bayshore Rd in Bayshore, P.O. William Judge and Sgt. James Scimone utilized physical force and "other" (type of force), with respect to the arrest of Mr. Kenneth Lazo. Mr. Lazo was charged with two counts of Criminal Possession of a Controlled Substance 3rd.

The indicated reasons for the utilized force are as follows: to overcome resistance, to restrain, prevent escape and to terminate unlawful conduct. The report further indicates that Mr. Lazo offered "weaponless" resistance to the officers and suffered a physical injury for which he received treatment. Both officers also suffered a physical injury, which required medical attention.

The involved officers' indicated their accounts of the incident on separate Supplementary Reports.

Injured Employee Report PDCS-1008e
CC#'s 2008-186197, 186198, 185970

Att. #s 13, 14, and 15

All three involved officers were injured during their interaction with Mr. Lazo on April 12, 2008. The officers were treated at Southside Hospital and released. Following below are the injured employees and their respective diagnosis:

- Sgt. James Scimone - Sprained right wrist.
- P.O. William Judge - Sprains and contusions to his left thumb, hand and wrist.
- Det. John Newton - Left thumb sprain and abrasion to left index finger.

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Evidence Analysis Request PDCS-3220-9c (2008-185633) Att. # 16
Involved Officers Flashlights

Det. Patrick Portella submitted for examination, two flashlights used during the confrontation with Mr. Lazo. Det. Portella reports that Medical Examiner Dr. Milewski compared the submitted items with bruises located on Mr. Lazo, during her examination.

The undersigned investigator contacted Ms. Morea of the Suffolk County Crime Lab. Ms. Morea confirmed that no laboratory analysis was conducted with respect to the above property.

Communications Records

Media Attachment # 1

The records indicate the following relevant transmissions (not verbatim):

911 Calls Received by Two Passing Motorists:

20.26.22 Hours: Suffolk Cop is being beat up by two "guys".

20.27.27 Hours: Uniformed officer has somebody down on the ground- I don't know if he needs help.

Detective Command

20.26.27 Hours: Echo Unit (Det. Newton) I need an assist Bayshore Rd and Southern State Parkway eastbound.

Third Precinct Radio Transmissions Regarding Mr. Lazo's Arrest at Bayshore Road

20.26.38 Hours: 3- Echo 42 to 3rd Dispatch - My partner is looking for an assist at eastbound Bayshore Rd. at Southern State Pkwy.

20.27.47 Hours: COPE 46 to 3rd Dispatch- Subject is in custody.

20.28.21 Hours: U-314 to 3rd Dispatch- Controlled no further.

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20:32:25 Hours: U-314 to 3rd Dispatcher- I am transporting an arrestee to the Squad.

20:34:55 Hours: U-314 to 3rd Dispatcher- I have arrived at the Third Precinct.

Third Precinct Desk to Third Precinct Dispatcher Telephone
Regarding Mr. Lazo's medical emergency at Third Precinct

21:00:21 Hours: Third Precinct Desk Officer to 3rd Dispatcher- Have rescue respond to precinct- prisoner unresponsive.

21:00:35 Hours: 3rd Dispatcher to F.R.E.S. Dispatcher- Have rescue respond to precinct for unresponsive prisoner. "Rush on rescue".

Third Precinct Radio Transmissions

Regarding Mr. Lazo's Medical Emergency at the Third Precinct

21.01.17 Hours U-334 to Headquarters put a rush on rescue.

21.05.10 Hours: U-315 hold me out to the precinct.

21.08.01 Hours: 3- Echo 42 to Headquarters advise rescue to come around by the Squad in the parking lot.

21.11.13 Hours: Unit-302 to Headquarters we are going to be assisting B.L.A. (Brentwood Legion Ambulance) with a 10-26 (transport) to Southside Hospital. We are going to shut down intersections on Fifth Avenue.

21.18.20 Hours: Unit 302 to Headquarters the ambulance is leaving the precinct now. (Multiple Third Precinct units requested to shut intersections of Fifth Ave).

21.19.48 Hours: Unit 302 to Headquarters the ambulance is leaving now.

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P.D. South Command

Transmissions Regarding Securing the Arrest Scene

21.21.14 Hours: Unit-336 can you hook up with Unit-314 and go back to where they did the 32 (arrest) from, with Joe (U-314), and hold the scene.

Suffolk County Fire Rescue – Communications Incident Report
((F.R.E.S. Event # CC08041352))

Att. # 18

Unit Responses:

21:05:02 Hours: Brentwood Ambulance dispatch/enroute
21:09:37 Hours: Brentwood Ambulance on scene at Third Precinct.
21:25:57 Hours: Brentwood Ambulance enroute to hospital.
21:27:05 Hours: Brentwood Ambulance at hospital.

“Relevant” Event Notes (F.R.E.S.):

21:02:15 Hours: Prisoner is patient
21:02:23 Hours: All info from Third Dispatch
21:05:18 Hours: S.C.P.D. 3rd Dispatch advises C.P.R. is now in progress.

C.A.D. (Computer Aided Dispatch) Printout

Att. # 19

The printout of Central Complaint #2008-185633 indicates the following relevant issues:

- At 2102 Hours: The Communications Section on April 12, 2008, activated the above central complaint number, in response to a request for rescue regarding an unresponsive prisoner at the Third Precinct.
- At 2106 Hours: C.P.R. is indicated as in progress.
- At 2106 Hours: Rescue unit arrives at the Third Precinct.
- At 2138 Hours: Rescue unit departs the Third Precinct enroute to the hospital.

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Scene Logs PDCS-1060

Att. #s 20, 21 and 22

A log was prepared for each of the three subject scenes regarding the incident.

- ❖ **Log # 1- Entrance ramp for Southern State Parkway (Eastbound) from Bayshore Road and Robert Moses Parkway, Bayshore.**
Sgt. Scott Welshimer #1080 prepared said log, which was initiated on 4/12/08 at 2129 hours, and terminated at 0035 hours (4/13/08).
- ❖ **Log # 2- Third Precinct 1630 Fifth Ave, Bayshore**
P.O. William Zambito #4816 prepared said log, which was initiated on 4/12/08 at 2102 hours, and terminated at 0215 hours (4/13/08)
- ❖ **Log # 3- Southside Hospital 310 E. Main St. Bayshore**
P.O. Mark Broderick #5588 prepared said log, which was initiated on 4/12/08 at 2145 hours, and terminated at 2328 hours.

Photograph Evidence

Photograph Atts # 1-14

Detective Patrick Portella/Homicide took the following photograph on October 15, 2008:

- **Photograph Att. # 1**- depicts the location of Mr. Lazo's arrest; Eastbound Southern State Parkway at Bayshore Road.

Police Officer Andrew LaRocca/Crime Scene Section took the following photographs on April 12th and 13th 2008:

- **Photograph Att. # 2**- depicts Interview Room # 129 within the Third Squad suite.
- **Photograph Att. # 3**- depicts chair and desk within Room # 129.
- **Photograph Att. # 4**- depicts oxygen respirator and A.E.D. device within Room # 129.
- **Photograph Att. # 5**- depicts frontal view of Sgt. James Scimone, his uniform indicating an appearance of a struggle.

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- **Photograph Att. # 6-** depicts frontal view of Det. John Newton, his pants indicating an appearance of a struggle.
- **Photograph Att. # 7** – depicts a close-up view of Det. Newton's injured left hand.
- **Photograph Att. # 8-** depicts frontal view of P.O. William Judge, his uniform indicating an appearance of a struggle.
- **Photograph Att. # 9** – depicts a close-up view of P.O. Judge's injured left hand.
- **Photograph Att. # 10-** depicts a view of Mr. Lazo's LEFT profile, indicating facial abrasions. (Photograph taken at Southside Hospital post pronouncement.)
- **Photograph Att. # 11-** depicts a view of Mr. Lazo's RIGHT profile, indicating facial abrasions/contusions. (Photograph taken at Southside Hospital post pronouncement).

Police Officer Jodi Rios/Crime Scene Section took the following photographs at the S.C.P.D. Westhampton Impound Garage on April 17, 2008:

- **Photograph Att. # 12-** depicts a view of the vehicle operated by Mr. Lazo's on the date of his arrest.

Detective Patrick Portella/Homicide took the following photograph at the S.C.P.D. Property Section on October 16, 2008:

- **Photograph Att. #13** – depicts a view of the cocaine and crack recovered from Mr. Lazo on the date of his arrest.
- **Photograph Att. #14-** depicts a view of a portion of the U.S. Currency recovered from Mr. Lazo on the date of his arrest.

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INVOLVED OFFICERS

Supplementary Report – Detective John Newton 1096/3130/NESOT Att. # 23

In the above report, Det. Newton indicated that he assisted Sgt. Scimone and P.O. Judge in subduing and arresting Mr. Lazo on 4/12/08.

Det. Newton further indicates the following:

The marked Cope unit conducted the traffic stop of Mr. Lazo's vehicle at the entrance to the Southern State Parkway from Bayshore Rd. Upon the stop, Det. Newton approached Mr. Lazo's vehicle. Mr. Lazo exited his vehicle and went to the back of his vehicle. As the officers were interviewing him, he (Lazo) was facing the officers and acting very nervous.

Mr. Lazo then started to turn towards his vehicle. As he did, he (Lazo) threw his right elbow toward Det. Newton knocking him back a step. Mr. Lazo then started to run. The officers attempted to stop Mr. Lazo but he was able to get free from their grasp and started to run towards the roadway. P.O. Judge tackled Mr. Lazo before he reached the roadway. Sgt. Scimone and P.O. Judge were struggling to control Mr. Lazo. Det. Newton attempted to handcuff Mr. Lazo but was unable to. PO Judge then shouted that Mr. Lazo attempted to grab P.O. Judge's gun.

Mr. Lazo continued his resistance and the officers were unable to subdue him. Det. Newton ran back to the "marked unit" and used the radio to request an assist. Det. Newton then ran back to assist the officers struggling with Mr. Lazo, and eventually they were able to subdue and handcuff him. PO Joseph Link transported Mr. Lazo into the Third Precinct.

Internal Correspondence- Detective John Newton 1096/3130/NESOT Att. # 24

Det. Newton indicates fundamentally the same account in his I.O.C. as he did in his previously submitted Supplementary Report. The following are relevant points not previously addressed:

- During Mr. Lazo's arrest, the only visible injuries Det. Newton observed were abrasions to Mr. Lazo's face.
- Mr. Lazo apparently received the abrasions as the officers were on the ground attempting to place him under arrest.

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- At no time during his arrest at the scene did Mr. Lazo complain of any pain or injury.
- Mr. Lazo did not appear to be suffering from any type of injury.
- At no time did Mr. Lazo ever request medical attention.
- At no time did Det. Newton ask Mr. Lazo if he required medical attention.
- Mr. Lazo did not appear to be intoxicated.
- Mr. Lazo was talking (at the scene).
- Mr. Lazo walked up to, and entered the police (transporting) vehicle on his own power.
- Mr. Lazo did not immediately require medical attention and was transported to the Third Squad for processing.

Supplementary Report -Sergeant James Scimone 983/330/T2

Att. # 25

Sgt. Scimone indicated the following:

On 4/12/08, Sgt. Scimone worked a 4x12 tour in Cope-37, doubled with P.O. Judge. At approximately 2005 hours, they assisted the 3rd Pct. NESOT Team with the traffic stop of Mr. Lazo's vehicle. Upon stopping the vehicle, P.O. Judge approached Mr. Lazo and requested his drivers license. The officers asked Mr. Lazo to turn off the vehicle and he complied. P.O. Judge, with the drivers license, returned to the Cope unit to conduct a data inquiry.

Det. Newton arrived on the scene in an unmarked police vehicle. Det. Newton had a brief conversation with P.O. Judge before approaching Mr. Lazo's vehicle. Sgt. Scimone advised Det. Newton that Mr. Lazo's vehicle had a push button ignition system that would allow Mr. Lazo to restart his car at anytime while inside the vehicle. At that point, the officers asked Mr. Lazo to exit his vehicle. Mr. Lazo complied and walked to the rear of the Cadillac. Sgt. Scimone asked Det. Newton for his flashlight to perform a cursory search of the Cadillac.

Mr. Lazo was standing with P.O. Judge and Det. Newton near the passenger rear quarter panel of the Cadillac. Sgt. Scimone was standing opposite from them on the drivers' side rear. Sgt. Scimone saw Mr. Lazo violently and quickly flail his arm by throwing his elbow out towards Det. Newton's face. Mr. Lazo then ran towards the front of the Cadillac. P.O. Judge and Det. Newton gave chase and Sgt. Scimone followed. P.O. Judge was able to bring Mr. Lazo to ground where he was fighting and out of control. P.O. Judge was directly behind Mr. Lazo's back while Sgt. Scimone positioned himself to Mr. Lazo's right side.

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Sgt. Scimone described Mr. Lazo as a large male approximately 250 lbs and extremely strong. The struggle placed Sgt. Scimone in a dangerous position, almost into the right travel lane of the entrance ramp to the parkway with vehicles closely speeding by. The officers repeatedly ordered Mr. Lazo to stop fighting, and to put his hands behind his back. He refused. Mr. Lazo's body remained rigid and the officers were unable to control him.

Sgt. Scimone began to strike Mr. Lazo in the right hand and arm with Det. Newton's flashlight. Mr. Lazo continued to resist. During the struggle, Sgt. Scimone heard P.O. Judge yell the word "gun" which led him (Scimone), to immediately believe that Mr. Lazo possessed a gun. Sgt. Scimone, fearing for his life and the safety of the other officers, struck Mr. Lazo in the back and head with the flashlight. Sgt. Scimone then dropped the flashlight and held onto Mr. Lazo's right arm as P.O. Judge held his body. Sgt. Scimone told Det. Newton to call for further assistance.

Sgt. Scimone and P.O. Judge continued to hold onto Mr. Lazo who continued to struggle and fight until Det. Newton returned. At that point, Det. Newton advised that he had Mr. Lazo's left arm handcuffed. Sgt. Scimone was then able to get Mr. Lazo's right hand behind his back and he was then fully handcuffed. The assisting units responded after Mr. Lazo was controlled. Sgt. Scimone had no further interaction with Mr. Lazo.

Internal Correspondence- Sergeant James Scimone 983/330/T2

Att. # 26

Sgt. Scimone indicates fundamentally the same account in his I.O.C. as he did in his previously submitted Supplementary Report. The following are relevant points not previously addressed:

- After the struggle with Mr. Lazo ended, Sgt. Scimone observed an abrasion to Mr. Lazo's face.
- The abrasion injury may have occurred when Mr. Lazo was taken to the ground during the struggle.
- Sgt. Scimone did not recall any other observable injuries on Mr. Lazo.
- At the scene, Mr. Lazo never complained of pain or requested medical attention.

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- While at the scene, Sgt. Scimone did not ask Mr. Lazo if he required medical attention.
- Mr. Lazo did not appear to be intoxicated or impaired by alcohol or drugs.
- Mr. Lazo was not immediately transported to the hospital because he did not appear to require immediate medical attention.
- Mr. Lazo was walking and talking while at the scene, and he never requested medical attention.
- After the altercation, Sgt. Scimone instructed P.O. Link to transport Mr. Lazo into the precinct.
- As Mr. Lazo was placed into the U-314 (vehicle), Sgt. Scimone turned away to dust himself off and check on the status of Det. Newton and P.O. Judge.
- As Sgt. Scimone was doing so, P.O. Link departed from the scene with Mr. Lazo.
- Sgt. Scimone was unaware that Officer Link has transported Mr. Lazo as a solo unit until later in the tour.

Supplementary Report –Police Officer William Judge 5390/330/T2

Att. # 27

PO Judge's description of the events leading up to Mr. Lazo's traffic stop is essentially the same as Sgt. Scimone's.

PO Judge indicated the following details regarding the events that took place after the officers stopped Mr. Lazo's vehicle:

Upon the officer's request, Mr. Lazo exited his vehicle and stepped to the rear of the vehicle. The officers began talking to Mr. Lazo who was standing with his hands on the fender. During their discussion, Mr. Lazo became agitated and suddenly threw his right elbow back at Det. Newton. Mr. Lazo then attempted to flee the scene on foot. P.O. Judge tackled Mr. Lazo from behind in a "football like" manner. While on the ground, Mr. Lazo was stating, "I'll take it out, I'll take it out." P.O. Judge released his grip at which time Mr. Lazo began to flee again. P.O. Judge tackled Mr. Lazo again at which time Det. Newton and Sgt. Scimone attempted to restrain him.

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While on the ground, Mr. Lazo reached back and attempted to grab P.O. Judge's gun. P.O. Judge began screaming "my gun, my gun," and started striking Mr. Lazo about the head with his Stringer flashlight in an attempt to prevent him from taking possession of his gun. Mr. Lazo continued to struggle, and was dragging P.O. Judge and Sgt. Scimone toward passing vehicles on the Southern State Parkway.

At that point, Det. Newton returned to his vehicle to broadcast a request for an assist. In an attempt to avoid being dragged into traffic, P.O. Judge began biting Mr. Lazo in the buttock area. Detective Newton returned and was able to place one cuff on Mr. Lazo's left hand. P.O. Judge took out his handcuffs and joined them with Det. Newton's empty cuff. He handed the cuff to Sgt. Scimone who placed it on Mr. Lazo's right hand. After Mr. Lazo was in custody, P.O. Judge rolled off Mr. Lazo and grabbed his left hand in pain. P.O. Judge was subsequently transported to Southside Hospital for treatment. P.O. Judge advised the transporting officer P.O. Link, that Mr. Lazo had not yet been frisked.

Internal Correspondence—Police Officer William Judge 5390/330/T2 Att. # 28

P.O. Judge indicates fundamentally the same account in his I.O.C. as he did in his previously submitted Supplementary Report. The following are relevant points not previously addressed:

- At the scene of the arrest, the only injury P.O. Judge observed on Mr. Lazo was an abrasion near his right eye.
- The "minor" injury was the result of a "violent" struggle.
- Mr. Lazo never complained of an injury or requested medical attention.
- P.O. Judge never asked Mr. Lazo if he required medical attention.
- Mr. Lazo did not appear to be intoxicated, or impaired by alcohol or narcotics.
- After checking Mr. Lazo for injuries, it appeared to P.O. Judge that there was none that required medical attention.
- Mr. Lazo was alert and able to move "freely" on his own.

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ASSISTING POLICE PERSONNEL

Supplementary Report- Police Officer Joseph Link 2889/310/3

Att. # 29

P.O. Link indicated the following:

On 4/12/08, P.O. Link worked a 3x11 tour in Unit-314. At approximately 2029 hours, P.O. Link responded to the Southern State Parkway to assist a Third Precinct detective who had requested an assist. P.O. Link arrived at the scene within one minute and advised the dispatcher that the scene was controlled. P.O. Link observed Mr. Lazo lying face down and handcuffed on the shoulder of the road.

P.O. Link observed that P.O. Judge, Sgt. Scimone and Det. Newton were each disheveled and out of breath. Sgt. Scimone asked P.O. Link to put Mr. Lazo into his police unit to transport to the precinct. P.O. Link helped Mr. Lazo to his feet and he walked to the police unit. While P.O. Link was putting Mr. Lazo into the rear of the police unit, P.O. Judge informed him that Mr. Lazo had not yet been frisked. While P.O. Link was checking Mr. Lazo's pants, Det. Newton informed him that there were drugs in the crotch of Mr. Lazo's pants. P.O. Link opened Mr. Lazo's pants and retrieved a large quantity of crack cocaine.

At 2033 hours, P.O. Link advised Headquarters that he was transporting Mr. Lazo to the Third Precinct for the detectives. At 2035 hours, P.O. Link arrived at the precinct and removed Mr. Lazo from the police vehicle. In doing so, Mr. Lazo's pants fell to the ground. For safety purposes, P.O. Link told Mr. Lazo to step out of his pants. As Mr. Lazo did, another large quantity of cocaine fell from his boxer shorts. P.O. Link retrieved the drugs and Mr. Lazo's pants from the ground and escorted him into the precinct.

Inside the precinct, P.O. Link secured his weapon in a gun locker and walked Mr. Lazo into the Detective Squad. He put Mr. Lazo into an interview room where he was secured by handcuffs. P.O. Link removed Mr. Lazo's earrings and placed them into a property bag. He then gave the second bag of cocaine to Det. Newton and left the squad room. According to P.O. Link, during the transport of Mr. Lazo, he (Lazo) never complained of any injuries and only said that he "messed up and got arrested." P.O. Link further reported that Mr. Lazo walked under his own power without any assistance, whenever he moved from "point to point."

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Internal Correspondence- Police Officer Joseph Link 2889/310/3 Att. # 30

P.O. Link indicates fundamentally the same account in his I.O.C. as he did in his previously submitted Supplementary Report. The following are relevant points not previously addressed:

- Upon arrival to the arrest scene, P.O. Link observed the struggle over and Mr. Lazo in custody.
- Due to the "close proximity" to the highway of Mr. Lazo's vehicle stop and subsequent arrest, P.O. Link asked Sgt. Scimone if "we should head to the precinct."
- Sgt. Scimone agreed and P.O.s Link and Judge helped Mr. Lazo to his feet.
- P.O. Link "looked" Mr. Lazo over for injuries and observed only a small abrasion to the right side of Mr. Lazo's face near his eye.
- Mr. Lazo did not appear to require any medical aid.
- P.O. Link, upon his arrival to the arrest scene, observed Mr. Lazo to be no longer physically agitated.
- P.O. Link did observe Mr. Lazo to be emotionally upset regarding his arrest.
- Mr. Lazo did not complain about any injuries to P.O. Link, nor did he ever request medical treatment.
- P.O. Link never asked Mr. Lazo if he was injured or desired medical aid.

Supplementary Report- Detective Christopher Talt 1327/3130/T4 Att. # 31

Det. Talt indicated the following:

On 4/12/08, Det. Talt worked a 5x1 tour assigned to the Third Pct. NESOT with Det. Newton. The detectives in separate vehicles were investigating a complaint based on anonymous information that an unknown male operating a dark blue Cadillac, was dealing drugs along the Sunrise Hwy. At approximately 2015 hrs, Det. Newton observed a dark blue Cadillac in the Bob's Store parking lot on the north side of Sunrise Hwy in Wets Islip. The detectives began to follow the Cadillac. Det. Talt requested the assistance of COPE 31 Sgt. Scimone regarding a future possible future traffic stop.

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The vehicle proceeded east on the service road before turning onto West 1st Street in West Islip. Det. Newton continued east on the service road and Det. Talt followed the Cadillac. Det. Talt then observed the operator of the Cadillac meet up with another unknown vehicle. Det. Talt then observed the operator of the Cadillac conduct a hand-to-hand transaction with the operator of the second vehicle.

The Cadillac immediately turned left and proceeded east on 1st St., then north on Pine St. before making a right turn onto the Sunrise Hwy service road without signaling. The Cadillac, traveling at a high rate of speed, headed east on the service road and then north on the Robert Moses Causeway. Det. Newton, with the assistance of Sgt. Scimone and P.O. Judge, conducted a traffic stop of the Cadillac, at the entrance to the Southern State Parkway from Bayshore Rd. Det. Talt continued east on the parkway passing the traffic stop.

Det. Talt, after hearing Det. Newton call for an assist on the Detective Band, notified the Third Pct. dispatcher of the location and situation. Mr. Lazo was subsequently taken into custody prior to Det. Talt arriving at the scene. Det. Talt responded to the Third Precinct to begin the arrest processing of Mr. Lazo, who was lodged in room # 129A. The transporting officer, P.O. Link, turned over a quantity of cocaine that was packaged in a manner consistent with street level drug sales.

Det. Talt entered the interview room at 2050 hours. Mr. Lazo requested a drink of water and Det. Talt supplied him with two cups of water. D/Sgt. Robert Koerber entered the room to complete a Prisoner Activity Log. It became apparent that Mr. Lazo needed medical treatment. D/Sgt. Koerber left the room to make that notification and Det. Talt stayed with Mr. Lazo.

A short time later Mr. Lazo put his head back and became unresponsive. Det. Talt alerted the squad of the situation and with the assistance of P.O. Broderick, began CPR on Mr. Lazo. P.O. Broderick and other assisting officers continued CPR until Brentwood Legion Ambulance responded. Mr. Lazo was transported to Southside Hospital for medical treatment and was pronounced dead at 2145 hours by Dr. Rutman.

Internal Correspondence— Detective Christopher Talt 1327/3130/T4 Att. # 32

Det. Talt indicates fundamentally the same account in his I.O.C. as he did in his previously submitted Supplementary Report. The following are relevant points not previously addressed:

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- Det. Talt initially entered the interview room containing Mr. Lazo, at approximately 2050 hours.
- Mr. Lazo had been inside room # 129 for approximately ten minutes before Det. Talt initially entered.
- Upon entering room # 129, Det. Talt did not observe any other Department members with Mr. Lazo.
- Mr. Lazo, wearing boxer shorts and socks, was sitting in the prisoner chair with his left hand cuffed to the desk.
- Mr. Lazo was angry and upset at the same time while cursing and yanking the handcuffs from the desk.
- Mr. Lazo calmed down and began to talk to Det. Talt.
- Mr. Lazo said he did not want to go to jail and that he was sorry for fighting with the officers.
- Mr. Lazo then began cursing again before asking Det. Talt for some water.
- Det. Talt left the room and immediately returned with two cups of water.
- The cups were placed on the corner of the desk and Mr. Lazo, with his right hand, picked up one of the cups and drank from it.
- Det. Talt observed abrasions and contusions on Mr. Lazo's face.
- Mr. Lazo stopped talking to Det. Talt and just started staring at the wall in front of him.
- Det. Talt was in room # 129 with Mr. Lazo for approximately five minutes prior to D/Sgt. Koerber entering the room.
- Mr. Lazo did not respond to any of D/Sgt. Koerber's questions.
- Mr. Lazo started to lose color in his face while breathing normally and sitting in his chair.

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- Almost immediately after D/Sgt. Koerber entered room # 129, it became apparent that Mr. Lazo needed medical attention.
- Approximately one minute after D/Sgt. Koerber left the room to request an ambulance, Mr. Lazo's head fell back against the wall and he slumped in his chair.
- Det. Talt yelled to the detectives in the detective squad room, notifying them of the situation.
- Det. Talt immediately uncuffed Mr. Lazo and with the assistance of P.O. Broderick, laid Mr. Lazo down on the floor of the interview room.
- P.O.s Broderick, Friedrich, Quesada and Cotter performed C.P.R.
- Det. Talt via police radio notified Brentwood Legion Ambulance of the exact location in the precinct of the medical emergency.
- At no time did Mr. Lazo ever complain of pain or request medical treatment.

Supplementary Report- Detective Sergeant Robert Koerber # 587

Att. # 33

D/Sgt. Koerber indicated the following:

On 4/12/08, D/Sgt. Koerber worked a 5x1 tour in the Third Squad. At approximately 2055 hours, D/Sgt. Koerber entered interview room # 129A to complete a Prisoner Activity Log on Mr. Lazo. While attempting to interview Mr. Lazo, it became apparent that he needed medical attention. D/Sgt. Koerber left the room to request an ambulance for Mr. Lazo.

Upon returning several minutes later, D/Sgt. Koerber observed Det. Talt and P.O. Broderick performing C.P.R. on Mr. Lazo. P.O. Broderick and other assisting officers continued C.P.R. until the ambulance arrived. Brentwood Legion Ambulance transported Mr. Lazo to Southside Hospital for medical treatment. D/Sgt. Koerber subsequently responded to the hospital and learned that Mr. Lazo had been pronounced dead at 2145 hours.

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Internal Correspondence- Detective Sergeant Robert Koerber # 587 Att. # 34

Detective/ Sergeant Robert Koerber indicates fundamentally the same account in his I.O.C. as he did in his previously submitted Supplementary Report. The following are relevant points not previously addressed:

- At approximately 2040 hours, D/Sgt. Koerber observed P.O. Link enter the hallway that leads into the squad, with a prisoner later known as Mr. Lazo.
- P.O. Link entered the squad with Mr. Lazo and D/Sgt. Koerber observed that Mr. Lazo, who appeared to be in an agitated state, was wearing green boxer shorts and white socks.
- The sergeant noticed that Mr. Lazo had bruising on his face around his eyes before directing P.O. Link to secure him in room 129A.
- At approximately 2055 hours, about fifteen minutes after Mr. Lazo's arrival, D/Sgt. Koerber entered room # 129A to conduct his required interview.
- On entry into the room, D/Sgt. Koerber observed Mr. Lazo sitting in the prisoner chair with his left hand cuffed to the desk.
- Det. Talt had immediately advised D/Sgt. Koerber that Mr. Lazo had just stopped talking and he "suddenly wasn't lookin good."
- D/Sgt. Koerber attempted to ask Mr. Lazo the required questions as to medications and complaints of pain or injuries, however, Mr. Lazo was unresponsive to both questions.
- Mr. Lazo was breathing, his eyes were open, he looked pale and he was staring straight ahead.
- D/Sgt. Koerber at that time left the room to call for medical assistance.
- D/Sgt. Koerber immediately responded to the Third Precinct front desk and requested that an ambulance respond to the Third Squad for an unresponsive prisoner.

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- P.O. Michael Drew 5959/310 called the dispatcher from the direct line and made that request.
- D/Sgt. Koerber then responded back to the Third Squad and observed Mr. Lazo, prone on the floor in the interview room, being assisted by Det. Talt, P.O.'s Broderick, Freidrich and Zurl.
- The above officers, assisted by additional personnel P.O.s Quesada and Cotter, were performing C.P.R. on Mr. Lazo.
- The officers utilized an A.E.D. (Automatic External Defibrillator), and oxygen.
- The officers continued C.P.R. until Brentwood Legion Ambulance arrived and transported Mr. Lazo to Southside Hospital.
- D/Sgt. Koerber responded to the hospital and at 2145 hours, Mr. Lazo was pronounced.
- Homicide Squad was notified and they initiated their investigation.
- At no time did D/Sgt. Koerber have conversation with Mr. Lazo during his time at the Third Squad.
- D/Sgt. Koerber completed the observational parts (visible physical/emotional condition) of the Prisoner Activity Log.
- D/Sgt. Koerber was unable to complete the verbal part of the log (prisoner claim of pain/injury or illness/Medications) due to Mr. Lazo's unresponsiveness.

Supplementary Report- Police Officer Mark Broderick 5588/310/3a1 Att. # 35

P.O. Broderick indicated the following:

On 4/12/08, P.O. Broderick worked a 3x11 tour in Unit-323, doubled with P.O. Jose Cardus. While in the uniformed squad room, at approximately 2100 hours, P.O. Broderick overheard that a male was in distress in the Third Squad. P.O. Broderick responded into the Third Squad and initiated C.P.R. to Mr. Lazo. He continued C.P.R. until Brentwood Legion Ambulance arrived and transported Mr. Lazo to the hospital.

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Supplementary Report- Police Officer Kathleen Cotter 5360/310/3 Att. # 36

P.O. Cotter indicated the following:

On 4/12/08, P.O. Cotter worked a 3x11 tour in Unit-315. At approximately 2100 hours, she received an email on the M.D.C from Desk Sergeant Peter Hansen requesting that she respond to the Third Precinct forthwith. Upon arrival at the precinct, P.O. Cotter was advised to go to the Third Squad and assist a person in cardiac arrest. She found a male on the floor having C.P.R. performed by Officer's Broderick and Zurl. P.O. Cotter relieved P.O. Broderick and performed Bag Valve Mask ventilations until the ambulance arrived. P.O. Cotter rode inside the ambulance enroute to Southside Hospital and assisted the medical team with C.P.R.

E-Mail Transaction Inquiry Att. # 37

The undersigned investigator conducted a transaction inquiry with respect to Police Officer Kathleen Cotter's report that she was ordered to the precinct via the Mobile Data Computer. The inquiry revealed that at 21:02:51 hours, Sergeant Peter Hansen #1142 transmitted an e-mail to P.O. Cotter ordering her to the Third Precinct forthwith.

Supplementary Report- Police Officer David Friedrich 5729/310/3 Att. # 38

P.O. Friedrich indicated the following:

On 4/12/08, P.O. Friedrich worked a 3x11 tour in Unit-302 double with P.O. Joseph Zurl. At approximately 2100 hours, P.O. Friedrich was in the Crime Control office when he learned that a prisoner needed medical assistance. P.O. Friedrich responded to the interview room where he observed P.O. Broderick administering first aid to Mr. Lazo. P.O. Friedrich assisted in administering C.P.R. until Mr. Lazo was transported to the hospital.

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Supplementary Report- Police Officer Lola Quesada 5557/310/3 Att. # 39

P.O. Quesada indicated the following:

On 4/12/08, P.O. Quesada worked a 3x11 tour in Unit-324. At approximately 2100 hours, P.O. Quesada responded to the Third Squad to assist with the C.P.R. in progress. Upon arrival, P.O. Quesada observed two officers administering C.P.R. to Mr. Lazo, who was on the floor. P.O. Quesada assisted both officers with oxygen and the positioning of Mr. Lazo.

Supplementary Report- Police Officer Joseph Zurl 5349/310/3 Att. # 40

P.O. Zurl indicated the following:

On 4/12/08, P.O. Zurl worked a 3x11 tour in Unit-302, double with P.O. David Friedrich.

At approximately 2100 hours, P.O. Zurl and his partner were in the Crime Control office when they were advised of a male in distress in the Third Squad. P.O. Zurl responded to the interview room and administered C.P.R. to Mr. Lazo until the ambulance arrived.

Internal Correspondence- Sergeant Scott Welshimer 1080/310/3 Att. # 41

Sgt. Welshimer reported the following:

- On 4/12/08, Sgt. Welshimer worked a 3x11 tour in Unit -336.
- At approximately 2025 hours, Sgt. Welshimer responded to "an officer needs assistance" call from a NESOT unit.
- Arriving within five minutes of the call, Sgt. Welshimer observed P.O. Link in the process of leaving the scene with a prisoner in the vehicle.

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- Sgt. Welshimer also observed Sgt. Scimone, P.O. Judge and Det. Newton to be disheveled and dirty, indicative of a struggle.
- Sgt. Welshimer was told that the situation was under control and he resumed patrol.
- At 2129 hours, Lt. Robert Williams directed Sgt. Welshimer to respond to the "NESOT scene" and establish security.
- Sgt. Welshimer immediately complied by responding and setting up a secure crime scene.

CIVILIAN WITNESSES:

Passing Motorist- John Baratta
(DOB 6/30/65) 27 Mark Dr. Smithtown, NY

Att. # 42

On 4/12/08, Detective Patrick Portella #1086 took a sworn written statement from Mr. John Baratta. Mr. Baratta indicated the following:

On 4/12/08 at approximately 2030 hours, Mr. Baratta was driving with his family from the Bayshore area. Mr. Baratta had just entered onto the Sagtikos Pkwy heading northbound from the Southern State Pkwy. Mr. Baratta noticed a blue and white Suffolk County Police car on the right shoulder of the road. He further noticed a struggle going on and told his family that a cop was down. Mr. Baratta told his family to call 911. Mr. Baratta also noticed a person in a white t-shirt on the ground. Mr. Baratta observed that person's upper body elevated off the ground.

A guy in blue was on top of him and they were struggling. A third person wearing a green shirt was standing behind the "guy" in blue. Mr. Baratta could not tell who the police were as he drove past however, he knew "something was wrong". Mr. Baratta's sister in law called 911 and subsequently clarified the exact location of the incident.

Passing Motorist- Mr. Frank Morrow

Detective Gerald McAlvin/Homicide Section, interviewed Mr. Morrow regarding the incident. Mr. Morrow indicated to Det. McAlvin that he was eastbound on the parkway in the middle lane, heading towards the Sagtikos Pkwy with his wife. He observed a car stopped on the grass portion with a marked police car behind it. He noticed the police car had flashing lights.

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Mr. Morrow also believed that there was another car stopped behind the police car. Mr. Morrow stated he observed a uniformed officer on top of a subject on the ground, and believed the officer was trying to make an arrest. Mr. Morrow further stated that the cars were on the entrance portion to the Southern State Pkwy from either the Robert Moses Causeway or the Bayshore Rd. exit. Mr. Morrow called 911 from his cell phone as he was driving northbound on the Sagtikos Pkwy.

Third Precinct Arrestee- Ms. Lesley Brewster- Sworn Statement
(DOB 6/29/78) 30 Parkway Blvd. Wyandanch, NY

Att. # 43

Det. Portella took a two-page sworn statement from Ms. Brewster on May 4, 2008. Ms. Brewster was being processed in the uniform squad room, when she observed Mr. Lazo upon his arrival at the precinct on April 12, 2008. Ms. Brewster stated that she observed Mr. Lazo handcuffed from behind, and walking slowly on his own power while being escorted through the precinct by two uniformed officers. She describes Mr. Lazo as having a reddish complexion and wearing shorts with no shirt. Ms. Brewster further describes Mr. Lazo as moving his head from side to side.

Ms. Brewster stated that approximately five to ten minutes later, she observed a uniformed officer run from the direction where Mr. Lazo was taken. Ms. Brewster then observed a "bunch" of officers run past the uniform squad room towards the direction where Mr. Lazo was taken.

Death Report PDCS-1002b – Detective Patrick Portella 1086/3310

Att. # 44

On April 12, 2008 at approximately 2200 hours, the S.C.P.D. Homicide Section initiated an investigation into Mr. Lazo's death. Detectives Gerard McAlvin and Philip Frendo assisted the lead investigator, Det. Portella. The detectives conducted a thorough and comprehensive investigation of the incident. In furtherance of their examination, all of the evidence recovered was presented to the respective offices of the medical examiner and district attorney.

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Automatic External Defibrillator (A.E.D.) – Download

Att. # 45

In furtherance of his investigation, Det. Portella recovered the A.E.D. download from the device utilized during Mr. Lazo's medical emergency. The recovered data indicates that the A.E.D. was attached to Mr. Lazo at 21:03:06 hours on 4/12/08. The device subsequently cycled FOUR times, each time indicating the command: "No Shock Advised".

Homicide Section personnel forwarded the downloaded information to Medical Examiner Dr. Milewski for her review.

Mr. Kenny Lazo's Medical Records

Att. # 46

Pre- Hospital Report- Brentwood Legion Ambulance

Brentwood Legion Ambulance Chief Joseph Kornahrens responded to the call for service at the Third Squad on April 12, 2008. He prepared a pre-hospital report with respect to his response to the incident. The report indicates the following under the heading "*Objective Physical Assessment*":

"23-year-old male found on the floor in a holding room in cardiac arrest, P.D. doing C.P.R. A.E.D. applied with no shock advised".

Southside Hospital

Att. # 47

The medical records indicate that Brentwood Ambulance transported Mr. Lazo to Southside Hospital where he was triaged at 2139 hours. The "Southside Hospital Emergency Record" indicates that Mr. Lazo arrived intubated in the field, and with no detectable vital signs. Mr. Lazo was treated for cardiac arrest and placed on a cardiac monitor. Medical support was withdrawn at 2145 hours and Mr. Lazo expired at 2145 hours. Dr. Matthew Rutman made said pronouncement.

The emergency record further indicates that Mr. Lazo had arrived at the hospital with bruising noted to his right temporal area, and a laceration above his left eye. Further noted was a bruise to Mr. Lazo's right chest, bump above left eye, bruising above both eyes and an abrasion to his left cheek. The "Southside Hospital Physician Highlights Record" indicates a "final primary diagnosis" as Cardiac Arrest.

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Suffolk County Medical Examiner's INVESTIGATIVE SUMMARY

Att. # 48

On April 12, 2008, Mr. Bryan Bobrowsky R.P.A. conducted a preliminary investigation into Mr. Lazo's death. He subsequently submitted to the Medical Examiner's Office, an investigative report regarding his findings. The report also includes post autopsy information regarding Mr. Lazo.

In Mr. Bobrowsky's report, under the heading "Pertinent Negatives", the following is indicated: *"No internal injuries of head and torso; No strap muscle of neck cartilage injury; No foreign bodies/obvious drugs found in GI tract."*

Under the heading "Autopsy Findings", the report indicates *"Multiple contusions/abrasions of face and scalp; Bilateral soft tissues (SubQ & Deep fat not muscular). Hemorrhage of neck uncertain if due to vascular access attempts; Abrasions/contusions of torso/extremities"*.

The Morgue Screening Tests indicate NO presence of alcohol or opiates. An examination of Mr. Lazo's urine produced a positive result for THC.

Office of Medical Examiner- Report of Autopsy (ME# 08-1311)

Att. # 49

Dr. Yvonne I. Milewski performed an autopsy of Mr. Lazo on April 13, 2008. The subsequent report filed by Dr. Milewski with respect to said autopsy indicates several diagnoses under the heading "Final Anatomic Diagnoses." The diagnoses include but are not limited to sudden cardiac, blunt impacts to torso and upper extremities and obesity.

Under the heading, "Cause of Death" the following is indicated: "Sudden cardiac death following exertion associated with prolonged physical altercation with multiple blunt impacts."

Under the heading, "Contributory" the following is indicated: "Obesity".

The "Manner of Death" is indicated as "Homicide".

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Supplementary Report PDCS-10025- Detective Patrick Portella Att. # 50

The report indicates that in October 2008, a Grand Jury, convened by the Suffolk County District Attorney's Office, heard testimony into the facts surrounding the death of Mr. Lazo. On October 31, 2008, the Grand Jury returned a "No True Bill" with respect to the police officers involved.

The report further indicates the status of Homicide Sections investigation into the Mr. Lazo's death as "Closed Non-Criminal".

Investigative Summary:

On April 12, 2008, the Third Precinct NESOT Team was conducting a drug investigation in the West Islip area. At approximately 2015 hours, Detectives Newton and Talt, in separate vehicles, began following the operator of a blue Cadillac (Mr. Lazo), traveling east on the Sunrise Hwy. service road. Det. Talt requested the assistance of COPE 31 Sgt. Scimone, regarding a possible future traffic stop. Det. Talt followed Mr. Lazo on to West 1st St. in West Islip, and observed Mr. Lazo conduct a hand-to-hand transaction with the operator of a second vehicle.

Mr. Lazo immediately left the location and made a right turn on to the service road without signaling. Det. Newton, with the assistance of Sgt. Scimone and partner P.O. Judge conducted a traffic stop of Mr. Lazo's vehicle, on the Robert Moses Causeway at the Bayshore Rd. exit. Det. Talt observed the traffic stop and continued east on the parkway.

Because Mr. Lazo's vehicle had a push button ignition system that would allow him to restart his vehicle at any time, the officers requested that Mr. Lazo exit his vehicle. Mr. Lazo complied and walked to the rear of his vehicle. Sgt. Scimone asked Det. Newton for his flashlight to perform a cursory search of Mr. Lazo's vehicle.

Mr. Lazo was standing with P.O. Judge and Det. Newton while appearing nervous. Mr. Lazo suddenly flailed his arm, and threw his right elbow back towards Det. Newton. Mr. Lazo started to run towards the front of his vehicle. The officers gave chase and P.O. Judge was able to tackle Mr. Lazo to the ground. P.O. Judge in his I.O.C. states that Mr. Lazo was saying- 'I'll take it out' "I'll take it out." P.O. Judge released his grip at which time Mr. Lazo began to flee. P.O. Judge tackled him again and Det. Newton and Sgt. Scimone attempted to restrain him. Mr. Lazo, weighing approximately 250 lbs. and described as "extremely strong," was fighting and "out of control". At approximately 2026 hours, two passing motorists notified 911 of police officers possibly in need of assistance.

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(NOTICE OF CLAIM)

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The officers repeatedly ordered Mr. Lazo to stop fighting and to put his hands behind his back. The struggle continued and moved dangerously close to the right travel lane of the entrance ramp to the parkway. Sgt. Scimone began to strike Mr. Lazo in the right hand and arm with a flashlight. P.O. Judge reports that during the continued struggle, Mr. Lazo reached back and attempted to grab P.O. Judge's gun. Sgt. Scimone and Det. Newton stated that they heard P.O. Judge yell "My gun", "My gun."

Sgt. Scimone fearing for his safety proceeded to strike Mr. Lazo in the back and head with the flashlight. Mr. Lazo continued his resistance and P.O. Judge, in an attempt to prevent himself from being dragged into the travel lane, began biting Mr. Lazo in the buttock area. At approximately 2026 hours, Det. Newton ran back to the police vehicle and requested assistance on the Detective Radio Band. Det. Talt monitoring the band relayed that request to the Third Precinct Dispatcher. At 2027 hours, the involved officers were able to secure Mr. Lazo's custody.

The first assisting unit, P.O. Link U-314, arrived on scene at 2028 hours. P.O. Link observed Mr. Lazo handcuffed and lying facedown on the shoulder of the roadway. In his I.O.C., P.O. Link reported that he observed the three involved officers disheveled and out of breath.

The three involved officers suffered various sprains and contusions for which they received treatment at Southside Hospital. The involved officers each reported observing an "abrasion" to Mr. Lazo's face at the conclusion of the struggle. Each officer in his I.O.C., however, stated that Mr. Lazo did not appear to require medical attention for the observed "abrasion." According to the officers, Mr. Lazo did not have any medical complaints, nor did he request any medical attention while at the scene. Mr. Lazo walked on his own power to the transporting police vehicle (U-314), where he was field searched.

In furtherance of the search at the arrest scene, P.O. Link recovered a large quantity of crack cocaine from Mr. Lazo's pants. At 2032 hours, P.O. Link transported Mr. Lazo to the Third Squad, arriving at the precinct at 2034 hours. According to P.O. Link, Mr. Lazo, during the transport, never complained of an injury nor requested any medical attention. Mr. Lazo, however, did appear emotionally upset regarding his arrest. While walking Mr. Lazo into the Third Precinct, P.O. Link recovered another large quantity of cocaine from Mr. Lazo's pants, which had fallen down.

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P.O. Link escorted Mr. Lazo into the precinct and down a hallway leading to the Third Squad suite. Ms. Brewster, under arrest in the uniform squad room, observed Mr. Lazo walking through the hallway on his own power. At approximately 2040 hours, D/Sgt. Koerber directed P.O. Link to secure Mr. Lazo in interview room # 129 of the Third Squad. Det. Talt entered room # 129 at approximately 2050 hours. Mr. Lazo was angry and upset while yanking the handcuffs from the desk. He eventually calmed down and began to talk to Det. Talt, apologizing for fighting with the officers. Mr. Lazo began cursing again before asking Det. Talt for some water. Det. Talt provided Mr. Lazo with two cups of water.

At approximately 2055 hours, D/Sgt. Koerber entered room # 129 to conduct the required prisoner interview. Det. Talt immediately advised the sergeant that Mr. Lazo had just stopped talking, and "suddenly wasn't looking good." The officers observed Mr. Lazo to be breathing and his eyes were open. According to the officers, Mr. Lazo looked pale and was staring straight ahead. D/Sgt. Koerber left the room to secure medical assistance for Mr. Lazo.

At 2100 hours, Third Precinct Desk personnel notified the Third Precinct dispatcher that rescue was needed for an unresponsive prisoner. At 2101 hours, a request for a "Rush on Rescue" was transmitted on the Third Pct. radio band from the Third Pct. D/Sgt. Koerber returned to the Squad and observed Mr. Lazo prone on the floor, being assisted by several officers. The assisting officers performed C.P.R. and utilized an A.E.D. in attempting to revive Mr. Lazo.

At 2109 hours, Brentwood Legion Ambulance arrived at the Third Squad. The report prepared by ambulance personnel indicate that upon their arrival, Mr. Lazo was in cardiac arrest and the police were performing C.P.R. At 2125 hours, the ambulance transported Mr. Lazo to Southside Hospital where he was pronounced at 2145 hours.

CONCLUSION:

After a careful review of the information derived pursuant to the subject investigation, the undersigned investigator was unable to determine any credible evidence to support any of the allegations made by the claimants. A review of the available evidence indicates that:

Justification existed for the involved officers to make the traffic stop of Mr. Lazo's vehicle on the entrance ramp to the Southern State Parkway;

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- Probable cause existed at the time of the subject arrest to support all of the criminal charges against Mr. Lazo;
- The force used by the involved officers against Mr. Lazo was reasonable and justified; and
- Members of the Department appropriately responded to Mr. Lazo's medical emergency at the Third Precinct.

Based on the above, the undersigned investigator is compelled to classify the allegations against all of the involved officers as follows:

Specific Allegation

Disposition

False Arrest

Exonerated

Excessive Force

Exonerated

Fail to Perform Duty

Exonerated

This investigation did determine that Sergeant James Scimone violated S.C.P.D. Rules and Procedures Chapter 2, Section 11.VI.C.1;

If it has been necessary to use physical force, the Officer shall immediately determine if the person requires medical treatment.

1. If the person has suffered a physical injury and/or complains of injury or pain, the person shall be transported to a hospital emergency room.

See Att. # 51

COPY

INTERNAL AFFAIRS BUREAU CASE #08-254i
(NOTICE OF CLAIM)

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A review of the available evidence indicates that:

- The involved officers utilized physical force against Mr. Lazo;
- Mr. Lazo suffered a physical injury; and
- Mr. Lazo was not transported from the incident location to the hospital.

Based on the above, the undersigned investigator is compelled to classify the allegation of Rules and Procedures Violation against Sergeant James Scimone as **SUBSTANTIATED**.

Secondary Complaint- (Unprofessional Language/Attitude)

Mr. Eric Menendez (DOB 7/23/87)
(Sworn Statement)

Att. # 52

Mr. Menendez's comments initially came to the attention of the Department via Newsday.com, where an interview of Mr. Menendez was posted. Mr. Menendez, in the interview, asserted that Third Precinct officers made inappropriate comments and simulations with a flashlight, on the night Mr. Lazo was arrested.

Department records indicate that Mr. Menendez was in the lobby on the night of Mr. Lazo's arrest, in order to sign a court information regarding a civilian arrest (CC# 2008-185571).

In furtherance of his death investigation, Det. Portella, on April 18, 2008, took a two-page sworn statement from Mr. Menendez regarding his allegations.

In his statement, Mr. Menendez alleged that a uniformed sergeant described as white and balding, with a gray moustache and beard entered onto the front desk area, took out his flashlight and simulated "how a person was beat with a flashlight." The "sergeant" then allegedly said to other police officers on the desk "we need to take that dead guy out of here before he stinks up the place." All of the officers started to laugh with the "sergeant." Mr. Menendez claimed that another citizen, a black female with a child, was also in the lobby at the time of the alleged conduct.

Det. Portella presented Mr. Menendez a photo-array (assembled by the Internal Affairs Bureau), containing all of the officers involved in Mr. Lazo's arrest or transport. Mr. Menendez did not pick any of them.

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**Ms. Karen Lajara – Third Precinct Lobby Witness
(Telephonic Interview)**

Media Att. # 2

On April 23, 2008, the undersigned investigator conducted a telephonic interview with Ms. Lajara regarding Mr. Menendez's allegations. Ms. Lajara confirmed that she and her nine- year old granddaughter were in the lobby of the Third Precinct on the night of Mr. Lazo's arrest. She had arrived at approximately 2100 hours and remained for about one hour. Ms. Lajara stated that she recalled observing a "balding" uniformed sergeant in his forties with a black uniformed officer, watching a baseball game on television.

Ms. Lajara did not recall hearing any improper comments, or observing any inappropriate simulations involving a flashlight.

**Mr. Robert Brown- Third Precinct Lobby Witness
(Telephonic Interview)**

Media Att. # 2

On April 23, 2008, the undersigned investigator conducted a telephonic interview with Mr. Brown regarding Mr. Menendez's allegations. Mr. Brown confirmed that he was in the Third Precinct lobby on the night of Mr. Lazo's arrest. He recalled observing Mr. Menendez being brought into the lobby with his bicycle.

Mr. Brown did not recall hearing any improper comments, or observing any inappropriate simulations involving a flashlight. He did state that his girlfriend Ms. Lesley Brewster might have information regarding my inquiry, because she was inside the precinct on evening of April 12, 2008.

**Ms. Lesley Brewster- Third Precinct Arrestee
(Telephonic Interview)**

Media Att. # 2

The undersigned investigator conducted a telephonic interview with Ms. Brewster on April 28, 2008. Ms. Brewster fundamentally provided a similar account as to what she subsequently indicated to the Homicide Section, with respect to what she observed while being processed on April 12, 2008.

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(NOTICE OF CLAIM)

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The reporting officer also questioned Ms. Brewster with respect to Mr. Menendez's allegation.

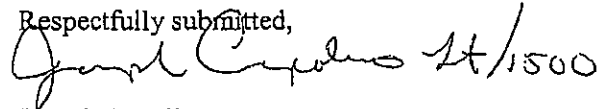
Ms. Brewster did not recall any inappropriate statements or simulations made by any officer while she was confined in the Third Precinct on April 12, 2008.

CONCLUSION

After a careful analysis of the information derived pursuant to the subject secondary investigation, the undersigned investigator was unable to determine any credible evidence to support any of the allegations made by Mr. Eric Menendez.

Based on the above, the undersigned investigator is compelled to classify the allegation of Unprofessional Language/Attitude as UNFOUNDED.

Respectfully submitted,


A handwritten signature in black ink, appearing to read "Joseph Capolino", followed by the date "2/11/09".

Joseph Capolino
Lieutenant
Internal Affairs Bureau

JC:rc

attachments

EXHIBIT I

CC NUMBER 08-185633	PCT. 3	COMMAND 3130	GRID 3		SC EMENTARY REPORT
DATE OF REPORT 4/12/08	DATE AND TIME OF OCCURRENCE 04/12/08 2100				
INCIDENT Death Investigation		STATUTE		PLACE OF OCCURRENCE <input checked="" type="checkbox"/> INSIDE <input type="checkbox"/> OUTSIDE	
COMPLAINANT SCPD		PHONE 854-8300		ADDRESS Third Squad, 1630 Fifth Ave., Bay Shore	
DETAILS					

On 04/12/08 the undersigned detective was working a 5x1 tour assigned to NESOT with Det. John Newton # 1096. The undersigned and Det. Newton were in separate vehicles. We had received information that a unknown male subject in a new dark blue Cadillac was selling drugs along Sunrise Hwy, in the Third Precinct area. At approximately 2015 hrs, we entered the Bob's Store parking lot, on the north side of Sunrise Hwy, in West Islip. The undersigned and partner were in radio contact with each other. Det Newton alerted the undersigned that he observed a vehicle fitting the description of the aforementioned vehicle. The vehicle left the parking lot and we began to follow it. The undersigned requested the assistance of COPE 31 Sgt Scimone # 983 and PO Judge #5390 for a possible future traffic stop. As we were following the vehicle Det. Newton observed a newer dark blue Cadillac in front of Herbee Dodge, on the southside of Sunrise Hwy, West Islip. That vehicle began to travel east on the south service road of Sunrise Hwy. We began to follow that vehicle. The vehicle made a right turn onto West First St. . The undersigned followed the vehicle and observed it meet up with another vehicle that was travelling west on West First St. The operator of the Cadillac and the operator of the other vehicle were involved in a clearly visable hand to hand transaction between windows. The undersigned followed the Cadillac which was travelling at a high rate of speed, initially west on West First St, then north on Pine Ave, then east on Sunrise Hwy, then north on Robert Moses and then east on the Southern State Pkwy. Det Newton and the COPE Unit conducted a traffic stop at the entrance to the Southern State Pkwy from Bayshore Road. The undersigned continued east on the parkway passing the traffic stop. The undersigned heard Det. Newton call for an assist on the detective band and the undersigned notified the Third Precinct dispatcher of the location and the situation. The subject, now known to me as Lazo, Kenny DOB 12/30/83 was eventually subdued and taken into custody prior to the undersigned arriving at the scene. PO Link #2889 transported him into the precinct. The undersigned responded to the precinct to begin arrest processing. Lazo was lodged in Interview room # 129 A. PO Link turned over to the undersigned a quantity of Cocaine which was packaged in a manner consistent with street level drug sales. At approximately 2050 hrs, the undersigned entered the interview room. Lazo requested a drink of water and the undersigned supplied him with two cups of water. D/Sgt Koerber # 587 entered the room to complete a prisoner activity log. It became apparent that Lazo needed medical treatment. D/Sgt Koerber left the room to make that notification, and the undersigned stayed with Lazo. A short time later, Lazo put his head back and became unresponsive. The undersigned alerted the squad of the situation and with the assistance of PO Broderick #5588 began CPR on Lazo. PO Broderick and other assisting officers continued CPR until Brentwood Legion Ambulance responded. Lazo was transported to Southside Hospital for medical treatment. The undersigned also responded to the hospital. At 2145 hrs, Dr. Rutman pronounced Lazo dead.

FOUNDED	CASE STATUS	WHEN APPLICABLE CHECK AND ENTER OR REVERSE
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input checked="" type="checkbox"/> ACTIVE <input checked="" type="checkbox"/> CLEARED BY ARREST <input type="checkbox"/> CLOSED <input type="checkbox"/> PENDING <input type="checkbox"/> EXCEPTIONALLY CLEARED	<input type="checkbox"/> RECLASSIFICATION OF INCIDENT <input type="checkbox"/> STOLEN OR RECOVERED PROPERTY

NOTE: BOTH T.T. MESS. NO'S WITH DATES MUST BE OBTAINED & ENTERED BY COMMAND REPORTING THE RECOVERY OF STOLEN AND/OR LOST PROPERTY.

T.T. MESS. NO REPORTING THE STOLEN AND OR LOST PROPERTY	DATE SENT	T.T. MESS. NO. CANCELLING ABOVE T.T. MESS	DATE CANCELLED
REPORTING OFFICER'S SIGNATURE Christopher Tait Det 1327 / 3130 / T-4		SUPERVISOR'S SIGNATURE	

PDCS 1084c (CG)

53-274.7/91cs

Att # 31

CC NUMBER 08-185633	PCT. 3	COMMAND 330	SECTOR 315	GRID
DATE OF REPORT 4/13/08	DATE OF OCCURRENCE 4/12/08	TIME OF OCCURRENCE 2100 hrs.		
INCIDENT Death Investigation		STATUTE		
COMPLAINANT SCPD		PHONE 854-8300		
PLACE OF OCCURRENCE Third Squad, Fifth Ave. Bay Shore		<input checked="" type="checkbox"/> INSIDE <input type="checkbox"/> OUTSIDE		
ADDRESS Third Squad, Fifth Ave. Bay Shore				

POLICE DEPARTMENT, COUNTY OF SUFFOLK, N.Y.
ACCREDITED LAW ENFORCEMENT AGENCY

SUPPLEMENTARY REPORT

DETAILS

On 4/12/08 the undersigned officer was working a 4x12 tour of duty in Cope-37 doubled with PO Judge #5390/330/T2, who was operating the police vehicle. At approx. 2005 hrs., Det. Tait of the 3rd PCT. NE/SOT Unit requested assistance with a Vehicle and Traffic stop of a late model blue Cadillac STS. At approx. 2015 hrs., Officer Judge and I stopped said vehicle at the eastbound entrance to the Southern State Parkway at Bay Shore Rd. Officer Judge approached the operator, who was alone in the vehicle. I approached the vehicle from the passenger side. Officer Judge requested the operator's drivers license. At that point I motioned to Officer Judge indicating that he should instruct the operator to turn off the ignition. When requested to do so by Officer Judge, the operator stated that this Cadillac was operated by push button and not by keys. The operator turned the Cadillac off, and then Officer Judge returned to the police vehicle to run data. I then walked around to observe the operator to be sure he did not re-start the vehicle by pushing the ignition button. While Officer Judge was running data in the police vehicle, Det. Newton arrived in an un-marked police vehicle. Officer Judge and Det. Newton had a brief conversation and then Det. Newton approached the Cadillac. I spoke with Det. Newton and advised him that we could not remove the Cadillac's key and that the Cadillac started by an ignition button, and it could be re-started by the operator instantly. At that point we asked the operator to exit the Cadillac. He complied and walked to the rear of the Cadillac. I asked Det. Newton for his flashlight to perform a cursory search of the Cadillac. The operator was at the passenger rear quarter panel with Det. Newton and Officer Judge. I was standing opposite from them on the driver's side rear. I then saw the operator violently and quickly flail his arm by throwing his elbow out toward Det. Newton's face. The operator then ran toward the front of the Cadillac. Officer Judge and Det. Newton gave chase and I followed. Officer Judge was able to bring the operator to the ground where he was fighting and out of control. Officer Judge was directly behind the operator's back while I positioned myself to the operator's right side. I lost sight of Det. Newton at that point in time. The operator was a large male approx. 250 lbs. and extremely strong. The struggle placed me in a dangerous position almost in the right travel lane of the entrance ramp to the parkway with vehicles closely speeding by. We ordered the subject repeatedly to stop fighting and put his hands behind his back. He refused. His body remained rigid and we were unable to control him. I began to strike the operator in the right hand and arm with Det. Newton's flashlight. The subject continued to resist. During the struggle, I heard Officer Judge yell the word "gun" which led me to immediately believe that the subject possessed a gun. Fearing for my life and the safety of the other officers, I struck the subject in the back and head with the flashlight. I then dropped the flashlight and held onto the subject's right arm as Officer Judge held his body. I yelled to Det. Newton to call for assistance. He did not have a radio and had to go back to a police vehicle to call for an assist. Officer Judge and I continued to hold onto the subject, who continued to struggle and fight until Det. Newton returned. At that point, Det. Newton advised that he had his left arm handcuffed. I was then able to get the subject's right hand behind his back and he was then fully handcuffed. Assisting officers responded after the subject was controlled. The subject was then transported to the Third Precinct by U-314. I had no further interaction with the subject.

FOUNDED	CASE STATUS	WHEN APPLICABLE CHECK AND ENTER ON REVERSE
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> CLEARED BY ARREST <input type="checkbox"/> CLOSED NON-CRIMINAL <input type="checkbox"/> PENDING <input type="checkbox"/> EXCEPTIONALLY CLEARED	<input type="checkbox"/> RECLASSIFICATION OF INCIDENT <input type="checkbox"/> STOLEN OR RECOVERED PROPERTY

NOTE BOTH T T MESS NO S WITH DATES MUST BE OBTAINED & ENTERED BY COMMAND REPORTING THE RECOVERY OF STOLEN AND OR LOST PROPERTY

T T MESS NO REPORTING THE STOLEN AND OR LOST PROPERTY	DATE SENT	T T MESS NO. CANCELLING ABOVE T T MESS NO	DATE CANCELLED
REPORTING OFFICER'S SIGNATURE <i>[Signature]</i>	<i>4/12/08 330/T2</i>	SUPERVISOR'S SIGNATURE <i>[Signature]</i>	<i>2T 31/4</i>

PDCA 1084c

53-274-7191cs

Att # 25

CC NUMBER 08-185633	PCT. 3rd	COMMAND 330	SECTOR 315	GRID
DATE OF REPORT 4/12/08	DATE OF OCCURRENCE 4/12/08	TIME OF OCCURRENCE 2100		

POLICE DEPARTMENT, COUNTY OF SUFFOLK, N.Y.
ACCREDITED LAW ENFORCEMENT AGENCY

SUPPLEMENTARY REPORT

INCIDENT Death Investigation	STATUTE	PLACE OF OCCURRENCE <input checked="" type="checkbox"/> INSIDE <input type="checkbox"/> OUTSIDE Third Squad 1630 5th Avenue
COMPLAINANT SCPD	PHONE 854-8300	ADDRESS 3rd Precinct 1630 5th Avenue Bay Shore, N.Y. 11706

DETAILS

On 4/12/08 the undersigned officer was working a 4x12 tour in marked unit COPE 32 with Sgt. James Scimone. At approximately 20:00 hours Detective Talt from the Third Precinct NESOT section requested our assistance in a narcotics transaction. Detective Newton, who also works in NESOT, gave a description and direction of travel of a vehicle that had been involved in a drug transaction. The vehicle was a blue Cadillac New York registration EDU-7050. We were traveling northbound on the Robert Moses Parkway at the Sunrise Highway overpass when we observed the vehicle. The undersigned initiated a vehicle and traffic stop in the vicinity Bayshore Road on the Southern State Parkway. The undersigned officer approached the vehicle from the driver's side while Sgt. Scimone approached from the passenger side. The driver, now known to me as Lazo, Kenny, J 12/30/83, produced a New York learners permit. The undersigned instructed the driver to exit the vehicle. Lazo complied and stepped to the rear passenger side. At this point, Detective Newton, Sgt. Scimone and the undersigned began talking to Lazo, who was standing with his hands on the fender at the rear of the car. During the discussion Lazo became agitated and suddenly threw his right elbow back at Detective Newton. Lazo then attempted to flee the scene on foot. The undersigned tackled Lazo from behind in a football like manner. While Lazo was on the ground he stated "I'll take it out, I'll take it out". The undersigned released his grip at which time Lazo began to flee again. The undersigned tackled Lazo again at which time Detective Newton and Sgt. Scimone attempted to restrain him. While on the ground Lazo reached back and grabbed the undersigned's gun. The undersigned began screaming "my gun, my gun," and began striking Lazo about the head with his Stinger flashlight in attempt to prevent him from taking possession of the undersigned's gun. Lazo continued to struggle and was dragging the undersigned and Sgt. Scimone toward passing vehicles on the Southern State Parkway. At this point, Detective Newton returned to his vehicle to broadcast an assist over the radio. In an attempt to avoid being dragged into traffic the undersigned was biting Lazo in the left buttock area. Eventually, Detective Newton returned and was able to place one cuff on Lazo's left hand. The undersigned took out his handcuffs and joined them with Detective Newton's empty cuff and handed the cuff to Sgt. Scimone who placed it on Lazo's right hand. After Lazo was in custody the undersigned rolled off of Lazo and grabbed his left hand in pain. Officer Joseph Link arrived at the scene and took custody of Lazo. As P.O. Link was escorting Lazo to his patrol car, the undersigned informed P.O. Link that Lazo had not been frisked. The undersigned was transported to South Side Hospital by Sgt. Scimone for left hand pain.

FOUNDED	CASE STATUS	WHEN APPLICABLE CHECK AND ENTER ON REVERSE
<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> ACTIVE <input type="checkbox"/> CLEARED BY ARREST <input type="checkbox"/> CLOSED NON-CRIMINAL <input type="checkbox"/> PENDING <input type="checkbox"/> EXCEPTIONALLY CLEARED	<input type="checkbox"/> RECLASSIFICATION OF INCIDENT <input type="checkbox"/> STOLEN OR RECOVERED PROPERTY

NOTE BOTH T T MESS NO S WITH DATES MUST BE OBTAINED & ENTERED BY COMMAND REPORTING THE RECOVERY OF STOLEN AND OR LOST PROPERTY

T T MESS NO REPORTING THE STOLEN AND OR LOST PROPERTY	DATE SENT	T T MESS NO. CANCELLING ABOVE T T MESS NO	DATE CANCELLED
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REPORTING OFFICERS SIGNATURE <i>William Judge P.O. 5390/330/T2</i>	SUPERVISOR'S SIGNATURE
---	------------------------

PDCS 10849

53-274.7/31cs

Att # 27

POLICE DEPARTMENT COUNTY OF SUFFOLK, NEW YORK

INTERNAL CORRESPONDENCE

TO: Joseph Capolino, LT. Internal Affairs Bureau
DATE: 12/6/08
FROM: Joseph A. Link PO 2889 310 3B1
COPY TO: AS NEEDED
SUBJECT: INTERNAL AFFAIRS BUREAU CASE #08-254i

This statement is being submitted for administrative purposes only, and under orders of Lt. Capolino of the Internal Affairs Bureau. I have not done so voluntarily, and I expressly decline to waive any right against self-incrimination and right to counsel. In addition, this statement, or any part thereof, may not be used against me in any subsequent criminal proceeding, and I submit this statement to avoid disciplinary sanctions for not submitting same.

On 4/12/08 the undersigned officer was working a 3x11 shift assigned to marked unit 314. At approximately 2030 hrs the undersigned responded to a call for an assist by the NESOT unit on the Robert Moses Causeway and Southern State Parkway. Upon arrival I found the subject to be in custody and the physical struggle to be over. The location of the car stop and subsequent arrest was unsafe due to the close proximity to the highway so I asked Sgt. Scimone if we should head to the precinct. He agreed so PO Judge and I helped the subject to his feet. I looked him over for injuries and only saw a minor abrasion to the right side of his face near his eye. He had no other injuries that I observed and did not appear to need any immediate medical treatment. From the time I got to the scene the subject was no longer physically agitated, he was only emotionally upset that he had gotten arrested. At no time during my interaction with the subject did he ever complain of any injuries or his treatment nor did he request any medical aid. At no time during this same period did I ask the subject if he was injured or if he needed or wished medical aid. At no time while the subject was in my custody did appear to be in need of medical aid and if he did in fact have any injuries that needed immediate medical attention I would have transported him directly to Southside Hospital.

Respectfully Submitted,


Joseph A. Link PO 2889 310 3b1

Att#

30

POLICE DEPARTMENT COUNTY OF SUFFOLK, NE K

INTERNAL CORRESPONDENCE

TO: Joseph Capolino, Lt./ I.A.B.

DATE: December 17, 2008

FROM: James Scimone, Sgt.983/330/T-2

COPY TO: as required

SUBJECT: IAB Case #08-254i

This statement is being submitted for administrative purposes only and because I have been ordered to do so by Lt. Capolino and refusal to do so would result in disciplinary action against me. I expressly to decline to waive my constitutional rights against self incrimination and this document may not be admissible against me in any criminal proceeding.

On April 12, 2008 I was working a 4x12 tour of duty doubled in COPE 37 with Officer Judge, William #5390/330/T2. During this tour of duty at approximately 2000 hrs. we assisted the Third Precinct NESOT detectives at the Bay Shore Rd. entrance ramp to the e/b Southern State Parkway. We became involved in a physical struggle with arrestee Lazo, Kenny 12/30/83 while attempting to affect a lawful arrest.


After the struggle I observed an abrasion to the face of Mr. Lazo and I do not recall any other observable injuries. That injury may have been caused when the subject was taken to the ground during the struggle or during the struggle itself.

At the scene, Mr. Lazo never complained of pain or requested medical attention nor did I ask if he required medical attention. Mr. Lazo did not appear to be intoxicated or impaired by alcohol or any drugs.

The subject was not immediately transported to the hospital due to the fact that he did not appear to require immediate medical attention. He was walking and talking, and as stated previously in this report, Mr. Lazo never requested medical attention at the scene.

After the altercation, as Mr. Lazo was being escorted to U-314, I instructed Officer Link #2289/310/3 to transport the subject into the precinct. As Mr. Lazo was placed into U-314, I turned away and began dusting myself off from the struggle. I then immediately checked the status of Det. Newton and Officer Judge. As I was doing so U-314 departed with the subject from the scene. I was unaware that P.O. Link transported Mr. Lazo as a solo unit until later in the tour.

Respectfully submitted,


James Scimone, Sgt.983/330/T-2

POLICE DEPARTMENT, COUNTY OF SUFFOLK, NEW YORK
INTERNAL CORRESPONDENCE

TO: Lieutenant Joseph Capolino
Internal Affairs / Inspectional Services Bureau

DATE: 12-6-08

FROM: William Judge P.O. 5390/330/T2

COPY TO: As needed

SUBJECT: INTERNAL AFFAIRS BUREAU CASE #08-254i

This statement is being submitted for administrative purposes only, and under orders of Lt. Joseph Capolino of the Internal Affairs Bureau. I have not done so voluntarily, and I expressly decline to waive any right against self-incrimination and right to counsel. In addition, this statement, or any part thereof, may not be used against me in any subsequent criminal proceeding, and I submit this statement to avoid disciplinary sanctions for not submitting same.

On 4/12/08 the undersigned officer was working a 4x12 tour in marked unit COPE 37 with Sgt. James Scimone. At approximately 2000 hours we assisted NESOT in a vehicle traffic stop which culminated in an arrest situation. At the scene of the arrest the only injury that was observed was an abrasion near the right eye. This minor injury was the result of a violent struggle. The subject never complained of injury or the need for medical assistance. At no time did I ask the subject if he required medical attention. During my interaction with the subject it did not appear that he was intoxicated or impaired by alcohol or any narcotics. After checking the subject for injuries it appeared there were none that required immediate medical attention and the subject was alert and able to move freely on his own.

Respectfully submitted.

William Judge

William Judge P.O. 5390/330/T2

Att# (28)

POLICE DEPARTMENT COUNTY OF SUFFOLK, NEW YORK

INTERNAL CORRESPONDENCE

TO: Lt. Joseph Capolino, Internal Affairs Bureau

FROM: Christopher Talt, Det. #1327/3130/NE-SOT

SUBJECT: IAB ALERT #08-254i

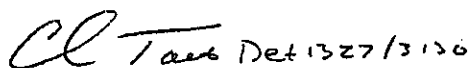
DATE: 12/09/08

COPY TO: as needed

"This statement is being submitted for administrative purposes only and under orders of Lt. Joseph Capolino. I have not done so voluntarily and expressly decline to waive my right against self-incrimination and right to counsel. In addition, this statement, or any part thereof, may not be used against me in subsequent criminal proceeding and I submit this statement to avoid disciplinary sanctions".

On 04/12/08, the undersigned was working a 5x1 tour, assigned to the Third Squad Neighborhood Enforcement Special Operations Team, with Det. John Newton #1096. At approximately 2050 hrs., the undersigned entered interview room #129A in the Third Precinct Detective Squad Room. Kenny Lazo, dob: 12/30/83, was sitting in the room, in the prisoner chair, with his left hand cuffed to the desk. Lazo was wearing socks and boxer shorts. Lazo was still worked up. Lazo was angry and upset at the same time. Lazo kept yanking the handcuffs away from the desk and kept cursing. Lazo calmed down and began to talk to me. Lazo said he didn't want to go to jail, and that he was sorry for fighting with the officers. Then Lazo started cursing again. Lazo then asked me for some water. The undersigned left the room and immediately returned with two cups of water. The undersigned placed the water on the corner of the interview desk. Lazo, with his right hand, picked up and drank from one of the cups. Lazo had abrasions and contusions on his face. Lazo was in interview room #129A for approximately ten minutes prior to the undersigned entering the room. Upon entering interview room #129A, the undersigned did not observe any other members of the department with Lazo. The undersigned was in the interview room with Lazo for approximately five minutes prior to D/Sgt. Koerber #587 entering the room. Lazo stopped talking to me and just started staring straight at the wall in front of him. Lazo didn't respond to any of D/Sgt. Koerber's questions. Lazo started to lose color in his face. Lazo was breathing normally and sitting in his chair. Lazo never complained of any pain or requested any medical treatment. Lazo's only request was for a drink of water, which the undersigned gave to him. Almost immediately after D/Sgt. Koerber entered the interview room, it became apparent that Lazo needed medical attention. Approximately one minute after D/Sgt. Koerber left the room to request an ambulance, Lazo's head fell back against the wall and he slumped down in the chair. The undersigned yelled to the detectives in the detective squad room, notifying them of the situation. The undersigned immediately uncuffed Lazo, and with the assistance of P.O. Broderick #5588, laid Lazo down on the floor in the interview room. P.O.'s Broderick, Zurl #5349, Friedrich #5729, Quesada #5557 and Cotter #5360 performed CPR. The undersigned, via radio, notified the Brentwood Legion Ambulance of the exact location in the precinct of the medical emergency.

Respectfully submitted,



Christopher Talt, Det. #1327
Command 3130/NE-SOT

CT:kb

Att#

32

POLICE DEPARTMENT COUNTY OF SUFFOLK, NEW YORK

INTERNAL CORRESPONDENCE

TO: Lt. Joseph Capolino, Internal Affairs Bureau
FROM: John Newton, Det. #1096/3130/NE-SOT
SUBJECT: INTERNAL AFFAIRS BUREAU CASE #08-2541

DATE: 12/10/08

COPY TO: as needed

"This statement is being submitted for administrative purposes only and because I have been ordered to do so by Lt. Capolino and to refuse to do so would result in disciplinary action against me. I expressly decline to waive my Constitutional Rights against self-incrimination and this document may not be admissible against me in any criminal proceeding".

On April 12, 2008, the undersigned was assigned to the 3rd Squad NE-SOT. I was working a 5-1 tour. At approximately 2030 hrs., at the Southern State Parkway eastbound entrance ramp from Bay Shore Rd., Bay Shore, Kenny Lazo (12/30/83) was placed under arrest for CPCS 3rd, Resisting Arrest and Harassment. During Lazo's arrest, the only visible injuries that the undersigned observed were abrasions to his face. Lazo apparently received the abrasions as we were on the ground attempting to place him under arrest. At no time during his arrest at the scene did Lazo complain of any pain or injury and did not appear to be suffering from any type of injury. At no time did Lazo ever request any medical attention and at no time did the undersigned ask Lazo if he required any medical attention. Lazo did not appear to be intoxicated. He was talking and was able to walk to and enter the police car on his own. Lazo did not immediately require any medical attention and was transported into the 3rd Squad for processing.

Respectfully submitted,

John Newton
John Newton, Det. #1096
Command 3130/NE-SOT

JN;kb

Att#

24

EXHIBIT J



POLICE DEPARTMENT COUNTY OF SUFFOLK
ACCREDITED LAW ENFORCEMENT AGENCY
DEPARTMENT DIRECTIVE
PDCS-2008a

PAGE 1 OF 1 PAGES

ORDER NUMBER 08-209

TYPE DEPARTMENT MEMORANDUM	AUTHORITY RICHARD DORMER POLICE COMMISSIONER	SIGNATURE <i>[Signature]</i>
SUBJECT/TOPIC/TITLE KENNY LAZO		
DISTRIBUTION ALL COMMANDS	DATE ISSUED 07/18/08	DATE EFFECTIVE 07/18/08
		DATE TO BE REVIEWED N/A

I wanted to keep you informed about the investigation into the death of Kenny Lazo, who died while in police custody on April 12. The department has been investigating the death of Mr. Lazo and will continue to do so if additional witnesses come forward. I am providing you with this information to ensure that you have a balanced account of what transpired, considering the inaccuracies that have been reported about this situation to date.

It is important to note that the police officers involved used the minimum force necessary to subdue Mr. Lazo—a large, strong, man who tried to grab an officer's gun and was pulling the officers dangerously close to the entrance ramp of the Southern State Parkway. Considering these circumstances, the officers had an obvious right to defend themselves.

There is no indication that Mr. Lazo was brutalized or terrorized, as stated by the Lazo family's attorney; the police officers involved in the situation acted professionally and humanely. In addition, there is no indication that Mr. Lazo was struck while his hands were cuffed behind him. Also, the marks on Mr. Lazo's neck resulted from resuscitation efforts by EMTs—there is no indication that he was choked by police officers, as was asserted by the family's attorney.

After he was placed in custody, Mr. Lazo was calm, and he engaged in conversation. He was offered water at the precinct, and he drank it. Furthermore, as soon as it became apparent that Mr. Lazo needed medical attention, detectives and officers at the precinct, including advanced EMTs, administered first aid and did everything possible to revive Mr. Lazo. An ambulance was immediately called, and life-saving efforts continued without interruption to the hospital.

I will keep you apprised about this case, as warranted.

- END -

CERTIFIED
Police Department
County of Suffolk, NY

[Signature]

EXHIBIT K

Newsday

LONG ISLAND

\$1.59

SUNDAY, JULY 20, 2008

NASSAU EDITION

Commish backs cops in Lazo arrest

BY ANDREW STRICKER
andrew.stricker@newsday.com

Suffolk Police Commissioner Richard Dormer, in an internal department memo, again defended officers' actions in subduing Kevin Lazo, saying they used "the minimum force necessary" in a violent struggle during a roadside arrest.

Lazo, 26, of Bay Shore, died in police custody the day of the struggle. The Lazo family has filed a notice that they intend to bring a lawsuit related to the April 12 death, and their attorney has said he will file a federal civil-rights suit.

Dormer, in the four-paragraph memo distributed via e-mail Fri-

day to all department members, addressed some specifics of the incident, writing that Lazo was "a large, strong man who tried to grab an officer's gun and was pulling the officers dangerously close to the entrance ramp of the Southern State Parkway, considering these circumstances, the officers had an obvious right to defend themselves."

Dormer gave an explanation for marks on Lazo's neck, saying they "resulted from resuscitation efforts by EMTs — there is no indication that he was choked by police officers."

Frederick Brewington, the lawyer representing the mother of Lazo's child, accused Dormer of deciding the facts of the case "be-

fore a proper evaluation."

He said the police commissioner's intent "is an attempt to influence anyone who reads his statement, including potential grand jury members and jurors if criminal charges are filed."

Brewington repeated his previous calls for the case to be investigated by an independent federal prosecutor.

Lazo was caught allegedly selling drugs in West Islip before officers pulled him over on the Southern State Parkway.

As officers tried to arrest him, police said, Lazo elbowed one detective and tried to grab an officer's gun as they grappled, prompting officers to hit him with flashlights.

Lazo was taken to the Third Precinct in Bay Shore, where he collapsed about 30 minutes later. He later was pronounced dead at Southside Hospital in Bay Shore.

In June, Suffolk County Medical Examiner Yvonne Milewski ruled the death a homicide, saying that Lazo suffered "cardiac death following exertion associated with prolonged physical altercation with multiple blunt impacts." Obesity was listed as a contributing factor.

The medical examiner's finding is a medical determination and "does not imply any potential criminal responsibility or civil liability on the part of any individuals," Milewski said.

when the finding was released.

On Monday, Dormer issued a written statement that said "the investigation indicates that the officers did not violate Police Department policies and procedures or New York State law, and we stand behind their actions in defending themselves."

Friday, Dormer confirmed that he wrote the memo.

"I felt they were entitled to hear the facts of the case... and to have correct information," Dormer said. He declined to discuss details of the memo, which a police source provided to Newsday. The memo does not include the names of the three officers involved, which police have declined to release.

NEWSDAY, SUNDAY, JULY 20, 2008 www.newsday.com

PlaintiffLazo 00131

Levy admits Suffolk withheld info from victim's family -- Newsday.com
newsday.com/news/local/crime/ny-lilazo145800528aug14,0,2938811.story

Page 1 of 1

Newsday.com

Levy admits Suffolk withheld info from victim's family

BY KEITH HERBERT AND ALFONSO A. CASTILLO

keith.herbert@newsday.com; alfonso.castillo@newsday.com

August 14, 2008

Suffolk County Executive Steve Levy acknowledged yesterday that the county failed the relatives of Kenny Lazo, a suspected drug dealer who died in police custody April 12, by keeping them in the dark for too long on what should have been easily accessible information about the death.

In doing so, Levy, while saying county police acted appropriately, admitted that the county withheld information that the family has been requesting for months.

Levy told Newsday yesterday that while civil service laws prohibit the county from releasing the names of the five officers involved in Lazo's arrest, the county plans to enact new protocols to make sure information such as profiles of arresting officers and disciplinary records is made quickly available in similar cases.

"I think it took way too long to give the family information as far as whether the officers had previous complaints against them and what the profiles were of these officers," Levy said yesterday, adding that he wants, "the greatest sense of transparency."

Lazo, 26, of Bay Shore, died after a violent struggle with police as they tried to arrest him. Frederick Brewington, the Hempstead attorney representing Lazo's family in a suit against the county, has maintained that police unrelentingly beat Lazo as his hands were cuffed behind his back. Police have said they struck Lazo with flashlights to subdue him just after he reached for an officer's gun.

Brewington said despite numerous requests to authorities, Lazo's family went months without such information as the identities of the officers or the medical examiner's report.

Suffolk prosecutors said Tuesday that they intended to present the case to a grand jury.

Bill Tricarico, first vice president of the Suffolk County Police Benevolent Association, said the union won't comment on an ongoing criminal investigation.

"If indeed the case is presented to a grand jury, at the conclusion of the grand jury finding, the PBA may make a statement," Tricarico said.

When asked if any of the officers had requested union representation in connection with the Lazo case, Tricarico said, "That has not happened."

Brewington said some important information about the officers remains elusive.

"I have asked this question over and over," Brewington said yesterday. "Have they been disciplined?"

Police would not comment on the officers' status.

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FBI reviewing Lazo death, Suffolk police say -- Newsday.com

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August 23, 2008

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FBI reviewing Lazo death, Suffolk police say

BY MICHAEL AMON AND KEITH HERBERT | michael.amon@newsday.com; keith.herbert@newsday.com
August 23, 2008

Suffolk police officials said Friday federal authorities are reviewing the death of a Bay Shore man struck by officers with flashlights and who later died after passing out in a precinct interview room.

FBI agents met Suffolk police brass and detectives earlier this year to discuss the April 12 death of Kenny Lazo and look at the department's investigatory file, Suffolk police officials said. Those files will soon be sent to the U.S. attorney's office for the Eastern District in Brooklyn, officials said.

"They're basically monitoring the case," said Insp. David Ferrara, chief of the Suffolk police's Internal Affairs Bureau, adding that the FBI "looked at everything."

Suffolk Police Commissioner Richard Danner called the meeting - the timing of which he wouldn't reveal - "a preliminary sit-down." "We don't know what they're going to do with it," Danner said. Suffolk police were cooperating, he said.

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Monica McLean, a spokeswoman for the FBI's New York field office, would not confirm the meeting nor the request for files, saying only the FBI was "aware" that Suffolk County District Attorney Thomas Spota was probing the case.

"We are not involved at this time," she said.

A spokesman for Benton Campbell, U.S. attorney for the Eastern District of New York, declined to comment.

The federal inquiries add another level of scrutiny to Lazo's death, which is also being probed by Suffolk homicide detectives, internal affairs and district attorney's office investigators.

Prosecutors have told Lazo's family attorney a grand jury will soon consider the case.

The New York State Commission of Correction, which regulates prisons, jails and precinct lockups, said Friday it had closed its own probe because Lazo did not die in a lockup. He was pronounced dead on arrival at Southside Hospital.

Lazo, 24, was struck multiple times with metal flashlights while struggling with officers who had stopped him on the Southern State Parkway, police have said. Lazo was struck after trying to grab an officer's gun, according to police.

Police have said they believed Lazo had just completed a drug deal, and that they found cocaine and \$2,400 in cash on him. He was taken for questioning to the Third Precinct where, less than 45 minutes after the altercation, he lost consciousness. He died 25 minutes later.

A Suffolk autopsy classified the death a homicide, calling it a "cardiac death following exertion associated with prolonged physical altercation with multiple blunt impacts." Homicide is a medical determination and may not imply any potential criminal responsibility.

In a subsequent memo to officers, Danner said the officers involved "used the minimum force necessary to subdue Mr. Lazo." The officers are Sgt. James Scimone, Det. John Newton, Det. Christopher Tait, Officer William Judge and Officer Joseph Link. The role each played is unclear.

Lazo's family believes the officers used excessive force. An autopsy commissioned by the family's attorney, Frederick Brewington of Hempstead, suggested Lazo was beaten about the face with his hands bound behind his back. Brewington requested a federal probe in a May 12 letter to Campbell.

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8/23/2008 00136

FBI reviewing Lazo death, Suffolk police say -- Newsday.com

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"We would hope that someone other than Suffolk County police would be looking closely at this," Brewington said.

Domer said federal authorities ask for information on high-profile cases involving allegations of police misconduct. Neither he nor the FBI would say when authorities last expressed interest in a [Long Island](#) case.

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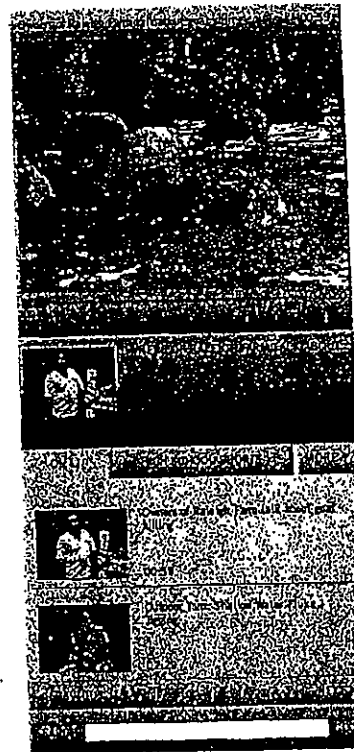
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EXHIBIT L

COUNTY OF SUFFOLK
OFFICE OF DISTRICT ATTORNEY



THOMAS J. SPOTA
DISTRICT ATTORNEY

November 3, 2008

Frederick Brewington, Esq.
50 Clinton Street
Suite 501
Hempstead, New York 11550

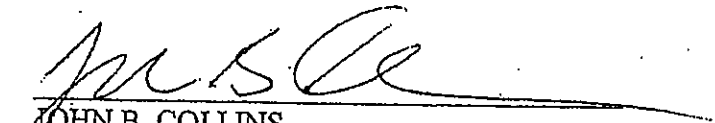
Re: Investigation into the death of
Kenny Lazo
Court Case No.: D-2913A/B/C-08

Dear Mr. Brewington:

In your capacity as representative of the family of Kenny Lazo, enclosed please find a copy of the Grand Jury's findings with regard to the above named investigation. The Grand Jury heard testimony beginning on October 20, 2008 and concluded its investigation on October 27, 2008.

Should you have any questions, I can be reached at (631) 852-2575.

Yours very truly,


JOHN B. COLLINS
Chief Trial Prosecutor

JBC/km
Enclosure
fax: (516) 489-6958

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CRIMINAL COURTS BUILDING, 200 CENTER DRIVE, RIVERHEAD, N.Y. 11901-3388
TELEPHONE (631) 852-2575 • FAX TRANSMITTAL (631) 852-2786

COUNTY COURT : COUNTY OF SUFFOLK


INVESTIGATION INTO THE DEATH OF
KENNY LAZO,

X
: FINDING OF DISMISSAL
: C.P.L. § 190.75(1)
: Court Case No. D-2913A/B/C-08
: CC No. 08-185633
X

On October 20, October 22, October 23 and October 27, 2008, the Grand Jury received evidence concerning the circumstances surrounding the death of KENNY LAZO which occurred on April 12, 2008.

The Grand Jury received evidence concerning the actions of JOHN NEWTON, JAMES SCIMONE and WILLIAM JUDGE of the Suffolk County Police Department.

After hearing the witnesses, the Grand Jury did not indict JOHN NEWTON, JAMES SCIMONE or WILLIAM JUDGE for any offense and made an entry to that effect upon its records.



FOREPERSON
OCTOBER 2008
GRAND JURY 1A, TERM XI

COURT CLERK'S OFFICE
STATE OF NEW YORK
COUNTY OF SUFFOLK

I, JUDITH A. PASCALE, Clerk of the County of Suffolk and the Court of Record thereof, do hereby certify that I have compared the annexed with the original dismissal order filed with the Court on 10-31-08 and, that the same is a true copy thereof, and of the whole of such original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court 11-3-08.

JUDITH A. PASCALE
Clerk

EXHIBIT M

GONZALEZ -V- COUNTY OF SUFFOLK

JOSEPH A. LINK - 5/19/11

CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

REALTIME REPORTING, INC.

124 East Main Street

Suite 202

Babylon, New York 11702

Phone: (516) 938-4000

Fax: (631) 983-8938

GONZALEZ -V- COUNTY OF SUFFOLK

JOSEPH A. LINK

3

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X
4 PATRICIA GONZALEZ and JENNIFER GONZALEZ, ,
5 individually and as co-administrators of the
6 Estate of KENNY LAZO,

Plaintiffs,

- against -

7 COUNTY OF SUFFOLK, SUFFOLK POLICE DEPARTMENT,
8 POLICE COMMISSIONER RICHARD DORMER, in his
9 individual and official capacity, POLICE
10 OFFICER JOHN NEWTON, in his individual and
11 official capacity, POLICE OFFICER JAMES
12 SCIMONE, in his individual and official
13 capacity, POLICE OFFICER WILLIAM JUDGE, in his
14 individual and official capacity, POLICE
15 OFFICE CHRISTOPHER TALK, in his individual and
16 official capacity, POLICE OFFICER JOSEPH LINK,
17 in his individual and official capacity,
18 COUNTY OF SUFFOLK OFFICE OF DISTRICT ATTORNEY,
19 SUFFOLK COUNTY DISTRICT ATTORNEY THOMAS SPOTA,
20 in his individual and official capacity, ASST.
21 DISTRICT JOHN B. COLLINS, in his individual
22 and official capacity, and "JOHN AND JANE
23 DOES 1-10" representing as yet unknown and
24 unidentified members of the Office of Suffolk
25 County District Attorney (all in their
individual and official capacities as
employees of the Office of Suffolk County
District Attorney),

Defendants.

-----X
100 Federal Court Plaza
Central Islip, New York

May 19, 2011
11:18 a.m.

(Continued)

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1

2 A P P E A R A N C E S:

3 FREDERICK K. BREWINGTON, Esq.

4 Attorneys for Plaintiff

5 556 Peninsula Boulevard

6 Hempstead, New York 11550

7 BY: WILLIAM GERMANO, JR., ESQ.

8

9 CHRISTINE MILAFI

10 Attorneys for Defendants

11 100 Veterans Memorial Highway

12 Hauppauge, New York

13 BY: RICHARD T. DUNNE, ESQ. Firm

14

15 ALSO PRESENT:

16 SCHOENFELD, SCHOENFELD & PINCUS, P.C.

17 Attorneys for Plaintiff

18 999 Walt Whitman Road

19 Melville, New York 11747

20 BY: DAVID A. PINCUS, ESQ.

21

22 JAMES SCIMONE

23 CHRISTOPHER TALT

24 BILLY JUDGE

25 JOHN NEWTON

2

2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----X
5 PATRICIA GONZALEZ and JENNIFER GONZALEZ, ,
6 individually and as co-administrators of the
7 Estate of KENNY LAZO,

Plaintiffs,

- against -

8 COUNTY OF SUFFOLK, SUFFOLK POLICE DEPARTMENT,
9 POLICE COMMISSIONER RICHARD DORMER, in his
10 individual and official capacity, POLICE
11 OFFICER JOHN NEWTON, in his individual and
12 official capacity, POLICE OFFICER JAMES
13 SCIMONE, in his individual and official
14 capacity, POLICE OFFICER WILLIAM JUDGE, in his
15 individual and official capacity, POLICE
16 OFFICE CHRISTOPHER TALK, in his individual and
17 official capacity, POLICE OFFICER JOSEPH LINK,
18 in his individual and official capacity,
19 COUNTY OF SUFFOLK OFFICE OF DISTRICT ATTORNEY,
20 SUFFOLK COUNTY DISTRICT ATTORNEY THOMAS SPOTA,
21 in his individual and official capacity, ASST.
22 DISTRICT JOHN B. COLLINS, in his individual
23 and official capacity, and "JOHN AND JANE
24 DOES 1-10" representing as yet unknown and
25 unidentified members of the Office of Suffolk
County District Attorney (all in their
individual and official capacities as
employees of the Office of Suffolk County
District Attorney),

Defendants.

-----X
Examination Before Trial of the
Defendant, JOSEPH A. LINK, pursuant to Notice,
before a Notary Public of the State of New
York.

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2 IT IS HEREBY STIPULATED AND
3 AGREED by and between the attorneys
4 for the respective parties herein,
5 that the filing, sealing and
6 certification of the within deposition
7 be waived.

8 IT IS FURTHER STIPULATED AND
9 AGREED that all objections, except
10 as to the form of the question,
11 shall be reserved to the time of the
12 trial.

13 IT IS FURTHER STIPULATED AND
14 AGREED that the within deposition
15 may be sworn to and signed before
16 any officer authorized to administer an
17 oath with the same force and effect as
18 if signed and sworn to before the
19 Court.

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21 - oOo -

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1
2 JOSEPH A. LINK, called as a
3 witness, having been first duly sworn by
4 a Notary Public, was examined and
5 testified as follows:

6 EXAMINATION BY

7 MR. GERMANO:

8 Q. State your name for the record,
9 please.

10 A. **Joseph A. Link**

11 Q. What is your address?

12 A. **1630 Fifth Avenue, Bayshore,**
13 **New York 11706.**

14 Q. Good morning officer, my name
15 is William Germano. I along with Fred
16 Brewington and David Pincus represent the
17 plaintiffs in this matter.

18 I will be asking you a series
19 of questions concerning your knowledge of
20 the relevant allegations in the complaint.
21 If you don't understand the question, just
22 state so and I will rephrase or I will ask
23 again.

24 When you respond, please use
25 words and not gestures or groans. The

6

1 Link.
2 court reporter is here to accurately take
3 down the record of our discussion.

4 If you need a break, feel free
5 to do so, but please try to answer any
6 questions that are pending.

7 Do you understand?

8 A. **Yes.**

9 Q. Just state your name and
10 business address for the record.

11 A. **Joseph A. Link. 1630 Fifth**
12 **Avenue, Bayshore, New York 11706.**

13 Q. Officer, are you currently
14 employed?

15 A. **Yes.**

16 Q. By whom are you employed?

17 A. **Suffolk County.**

18 Q. For how long have you been
19 employed by Suffolk County?

20 A. **Nineteen years.**

21 Q. In those nineteen years, have
22 you been employed in any other capacity
23 but police officer?

24 A. **No.**

25 Q. When did you take the

8

1 Link

2 competitive examination?

3 A. **1987.**

4 Q. Approximately, how many times
5 did you take the competitive examination?

6 A. **I believe just once.**

7 Q. What are your duties and
8 responsibilities as a police officer?

9 A. **Uniform patrol.**

10 Q. Is that your current duty and
11 responsibility?

12 A. **Yes.**

13 Q. What precinct are you currently
14 working in?

15 A. **Third Precinct.**

16 Q. Prior to the Third Precinct,
17 have you worked at any other precinct?

18 A. **No.**

19 Q. You have been at the Third
20 Precinct for nineteen years?

21 A. **Other than the academy, yes.**

22 Q. Do you have a partner?

23 A. **No.**

24 Q. Have you ever had a partner?

25 A. **I rode in a double car in the**

1 Link

2 early '90s for three or four years.
3 Midnight.

4 Q. Prior to working with the
5 County of Suffolk, had you had any prior
6 law enforcement experience?

7 A. **New York City.**

8 Q. How long did you work in New
9 York City?

10 A. **Slightly over three years.**

11 Q. When did you work there?

12 A. **1989 to the time I resigned to**
13 **come out here.**

14 Q. What was your rank with the
15 New York City police department?

16 A. **Police officer.**

17 Q. What were your duties and
18 responsibilities?

19 A. **Uniformed patrol.**

20 Q. When you say uniformed patrol,
21 what does that mean?

22 A. **Patrol a certain geographic**
23 **area in uniform.**

24 Q. Were your duties essentially
25 the same or similar in uniformed patrol in

9

Link

Suffolk and in the city?

A. Essentially, yes.**Q.** When did you take the New York City competitive examination?**A. Same time, within months. It was the fall of 1987.****Q.** Prior to working with the New York City Police Department, did you have any other law enforcement experience?**A. No.****Q.** Did you graduate high school?**A. Yes.****Q.** When did you graduate high school?**A. 1979.****Q.** Did you attend college?**A. Suffolk Community for one semester.****Q.** When did you do that semester?**A. Fall of 1979.****Q.** For what reason, if any, did you stop attending Suffolk Community?**A. I joined the U.S. Navy.****Q.** For, approximately, how long

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Link

were you in the Navy?

A. Exactly six years.

MR. GERMANO: Mr. Pincus has entered the room.

Q. When were you discharged?**A. February 10, 1986.****Q.** For what reason, if any, were you discharged?**A. Finished my obligation.****Q.** Where were you stationed while you were in the Navy?**A. Started in Orlando, Florida for boot camp. Millington, Tennessee for trade school. Lemoore, California for another school. China Lake, California. San Diego, California. Three aircraft carriers.****Q.** What were your duties and responsibilities in the Navy?**A. I worked on electronic systems on aircraft.****Q.** What kind of course work did you have to take to be able to perform that responsibility?

11

Link

A. Basic to college level

electronics.

Q. Did you ever receive a college degree?**A. No.****Q.** Did you have any other duties or responsibilities with the Navy other than working on electronic systems?**A. No.****Q.** In February 1986, when your obligation with the Navy ended, did you seek other employment?**A. Yes.****Q.** Did you obtain other employment?**A. Yes.****Q.** Where did you obtain employment?**A. I worked for a moving company in San Diego briefly until I came back to New York. After that I worked for a custom home builder, and following that Grumman Aerospace.****Q.** What job did you hold for Grumman?**A. I worked on electronic systems**

12

Link

and EA6Bs.

Q. For how long did you work there?**A. Approximately two years.****Q.** After you worked for Grumman, where did you work?**A. New York City Police Department.****Q.** You indicated that you took the Suffolk examination approximately the same time you took the New York City examination in 1987.

Were you put on a wait list to get into Suffolk?

A. Yes. You are put on the list, the open list, I guess, it's called.**Q.** Have you ever been arrested?**A. I was picked up as a juvenile. I am not sure if I was arrested or not. I was 12 years old.****Q.** Were you charged with violating the law?**A. No charges, I was released.****Q.** Do you know why you were picked up?**A. I was roaming around a factory**

13

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1 Link

2 yard with my friends.

3 **Q.** That would have been a
4 loitering or trespassing charge?

5 **A.** **Trespassing, at best.**

6 **Q.** Have you ever been convicted
7 of a crime?

8 **A.** **No.**

9 **Q.** During your stint with the New
10 York City Police Department, were you ever
11 the subject of a civilian complaint?

12 **MR. DUNNE:** Note my
13 objection to the entire line
14 of questioning. Understanding
15 that it goes to the Manel
16 (Phonetic) portion of the
17 claims.

18 Go ahead and answer the
19 best that you can.

20 **A.** **I was not specifically named,**
21 but they gave me one because I happened to
22 be operating a van at the time, somebody
23 made a claim against a van operator.

24 **Q.** What was that complaint?

25 **A.** **Something to do with a member**

14

1 Link

2 of the public asked for assistance on an
3 accident and the guy drove away.

4 **Q.** Were you disciplined?

5 **A.** **No.**

6 **Q.** Was there a finding?

7 **A.** **As far as I know I was**
8 **exonerated.**

9 **Q.** Do you recall when that complaint
10 was made?

11 **A.** **Probably it was the spring of**
12 **'90.**

13 **Q.** What precinct were you working
14 in at the NYPD?

15 **A.** **I was assigned to a division**
16 **at the time in field training. Division 17.**

17 **Q.** Where is that located?

18 **A.** **Queens.**

19 **Q.** While with the NYPD, did you
20 have any other -- were you aware of any
21 other complaints made naming you in a
22 civilian complaint?

23 **A.** **None that I am aware of.**

24 **Q.** Are you aware if you have been
25 named in any complaints with any Internal

1 Link

2 Affairs Bureau within the New York City
3 Police Department?

4 **A.** **I was only interviewed for**
5 that one. I am not sure if there was
6 anything else.

7 **Q.** Were you ever disciplined when
8 you worked for the city?

9 **A.** **No.**

10 **Q.** Have you ever been named in
11 any Internal Affairs Bureau complaint in
12 the County of Suffolk?

13 **A.** **Yes.**

14 **Q.** When was the first one?

15 **A.** **1993, '94.**

16 **Q.** Were you named in any other
17 complaints?

18 **A.** **I have had a few, yes.**

19 **Q.** When was the next complaint?

20 **A.** **I am not sure. Probably**

21 shortly after that. I don't keep track.

22 **Q.** What was the sum and substance
23 of the first complaint?

24 **A.** **I honestly don't know.**

25 **Q.** Do you recall if it had to do

16

1 Link

2 with a complaint of excessive force?

3 **A.** **I have had complaints**

4 throughout my career. Some are unlawful
5 arrest, some are excessive force, I don't
6 know which are which. I don't know the
7 time frames.

8 **Q.** Have you been named in more
9 than five IAB complaints?

10 **A.** **Yes.**

11 **Q.** Have you been named in more
12 than ten?

13 **A.** **Probably close to ten, ten to**
14 **fifteen.**

15 **Q.** You indicated that the sum and
16 substance of some of those was unlawful
17 arrests and excessive force.

18 Do you recall any other
19 allegations made concerning your conduct
20 as a police officer?

21 **A.** **I believe one of them was**
22 something to do with unlawful search of a
23 car and that is it.

24 **Q.** Have you ever been disciplined?

25 **A.** **As a result of Internal Affairs?**

17

Link

Q. As a result of anything in the County of Suffolk.

A. **I believe I have been** disciplined for MBC use, which is the mobile computer in the car for unauthorized e-mail.

Q. Is that using the computer for personal reasons?

A. **No. We were responding to a** call. The other officer asked me if I found it, and I said, it was a female and male arguing. He e-mailed me "looks like a BJ gone bad", meaning prostitute. I said, yes. We got disciplined.

Q. So the incident involved inappropriate conduct rather than --

A. **I guess the term BJ on the** computer.

Q. It was not about actually using the computer it was as a result of the conduct?

A. **Yes.**

Q. What kind of discipline did you receive?

18

Link

A. **I believe I lost a vacation day.**

Q. Have you been disciplined in any other point in time?

A. **I don't believe so, no.**

Q. Do you recall the claim of excessive force that was made against you?

A. **There was a few that were** made. The one I was named specifically?

Q. Yes.

A. **Was Matthew McCawly.**

Q. Is that the complainant?

A. **Yes. He is the complainant** and eventually the guy who brought the lawsuit.

Q. When was that?

A. **1990 somewhere. I am not sure.**

Q. You said he filed a lawsuit?

A. **Yes.**

Q. What was the result of his IAB complaint?

A. **IAB complaint was either** unfounded or unsubstantiated.

Q. What was the sum and substance of his complaint?

19

Link

A. **Unnecessary force and unlawful** arrest.

Q. Could you describe what he specifically alleged in that complaint?

A. **Something to do with, I don't** know if he specifically said I punched him, or beat him, and I pulled him over for no reason.

Q. Did the complaint indicate if you allegedly used a weapon or equipment during the course of the beating?

A. **No. Actually yes. He said I** hit his head on the trunk of my car.

Q. Where was the lawsuit filed?

A. **I believe Mineola.**

Q. That would have been in state court?

A. **Not sure.**

MR. DUNNE: Still federal court.

Q. Was any other officer named in that lawsuit?

A. **No, just me.**

Q. Did that action go to trial?

20

Link

A. **They settled prior to or right** after jury selection.

Q. How much did the case settle for?

A. **I believe it was less than** \$10,000.

Q. Other than the incident with Matthew McCawly, were you named in any other IAB complaint for excessive force or using undue force?

A. **I am sure I was. I don't** remember who, but I would say yes.

Q. When was the next time you were named?

A. **I am not sure. I don't keep** track.

Q. Do you recall when the last one was?

A. **Probably Mario, but I was not** named specifically.

Q. Who was Mario?

A. **Mario Cedeno, C-E-D-E-N-O.**

Q. What was the sum and substance of that complaint?

A. **I believe it was unlawful**

21

1 Link
 2 arrest and unnecessary force.
 3 **Q.** What were the specific
 4 allegations of unnecessary force?
 5 **A.** **He claimed he got beaten by**
 6 **police officers.**
 7 **Q.** Did you have any contact with
 8 Mario Cedeno during the course of that
 9 incident?
 10 **A.** **Yes.**
 11 **Q.** What contact did you have with
 12 him?
 13 **A.** **I helped arrest him.**
 14 **Q.** Did your actions or conduct
 15 get called into question as a result of
 16 the IAB complaint?
 17 **A.** **Not my specific actions. No,**
 18 **I don't believe so.**
 19 **Q.** Do you know whose actions got
 20 called into question in terms of police
 21 officers?
 22 **A.** **There was two other officers**
 23 **named, and I believe he had the officer**
 24 **using the force as a John Doe.**
 25 **Q.** The officer that used force,

22

1 Link
 2 what did the complaint specifically allege
 3 was used?
 4 **A.** **I believe he was hit by --**
 5 **claimed he was hit by a flashlight. He**
 6 **also claimed that one officer, Frank**
 7 **Rendon, pistol whipped him.**
 8 **Q.** Did you carry a flashlight on
 9 your person at or about the time of this
 10 incident?
 11 **A.** **No.**
 12 **Q.** Was a flashlight housed in the
 13 vehicle you drove?
 14 **A.** **Yes.**
 15 **Q.** What other officers were
 16 involved?
 17 **A.** **Named in the suit was Frank**
 18 **Rendon, R-E-N-D-O-N, Christine Cunningham,**
 19 **myself. That was the only three.**
 20 **Q.** Was a lawsuit filed?
 21 **A.** **Yes.**
 22 **Q.** When was the lawsuit filed?
 23 **A.** **Maybe five years ago. 2005,**
 24 **2006.**
 25 **Q.** Did the matter go to trial?

23

1 Link
 2 **A.** **Yes.**
 3 **Q.** Was there a verdict?
 4 **A.** **Yes.**
 5 **Q.** What was the verdict?
 6 **A.** **They found for us.**
 7 **Q.** As a result of that
 8 investigation that occurred from this
 9 complaint, were you ever disciplined?
 10 **A.** **No.**
 11 **Q.** Prior to this Mario Cedeno
 12 matter, do you recall when any other
 13 complaint naming you for any actions of
 14 yours were ever called into question?
 15 **A.** **There was a -- I can't**
 16 **remember the kid's name. Last name was**
 17 **Blacklidge. He made a complaint. I**
 18 **believe that was also a John Doe. I made**
 19 **the arrest. I was part of the**
 20 **investigation so it was my complaint. I**
 21 **don't think I was named specifically.**
 22 **Q.** What was the last name?
 23 **A.** **Blacklidge, B-L-A-C-K-L-I-D-G-E.**
 24 **Q.** What was the sum and substance
 25 of the complaint?

24

1 Link
 2 **A.** **During an arrest he claimed**
 3 **they, an officer, I want to say punched**
 4 **him or slapped him in the face. During**
 5 **the depositions, he insisted it wasn't me.**
 6 **Q.** What other officers were named?
 7 **A.** **Nobody.**
 8 **Q.** Did he claim that a weapon or
 9 any type of equipment was used?
 10 **A.** **No, just a hand.**
 11 **Q.** What was the result of that
 12 complaint?
 13 **A.** **Lawsuit that went to trial and**
 14 **found in our favor.**
 15 **Q.** Was any other officer named in
 16 the lawsuit?
 17 **A.** **I don't believe so, but I**
 18 **believe my partner at the time was**
 19 **involved because I was in a double car.**
 20 **Q.** Who was your partner?
 21 **A.** **William Miller. As a matter**
 22 **of fact he was not named. He was not**
 23 **sitting in the courtroom.**
 24 **Q.** Do you remember if there was
 25 an officer --

25

Link

A. No, it was just me at the table.

Q. Prior to the Blacklidge

complaint, do you remember any other complaints made to Internal Affairs concerning your conduct?

A. These are all ones that ended in lawsuit. There were other complaints that I have no idea about. I was very active.

Q. Any other lawsuits that you can remember --

A. The last one I believe is Noel Almedina (phonetic). He sued probably a group of three or four of us.

Q. What was the sum and substance of that complaint?

A. Unnecessary force by female officer and a male. I think they named my partner, Jack Catalina, and unlawful arrest.

Q. What were the specific allegations of unnecessary force?

A. I am not sure.

Q. Do you recall if it had to do with physical abuse?

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Link

A. I believe he claimed he was struck. With what, I don't remember.

Q. It could have been with a piece of equipment or something else?

A. Could have been, yes.

Q. Did that matter go to trial?

A. No, it did not.

Q. Did it settle?

A. I think it stopped without a settlement prior to depositions.

Q. Do you know why it stopped?

A. No, I don't.

Q. As a result of that complaint, did you receive any discipline?

A. No.

Q. Do you recall any other lawsuits that you were named or a part of?

A. That is it.

Q. Other than those that you previously mentioned, did you ever have to give testimony concerning a lawsuit naming other officers for the department?

A. I don't believe so, no.

Q. What type of training did you

27

Link

receive in the police academy?

A. The same as everybody else.

Rules and procedures, various aspects of law, EMT training, physical and defense tactics.

Q. Were you ever retrained in any of these areas?

A. We are trained periodically throughout the year.

Q. How often do you get retraining?

A. I know there are probably at least five films which are self taught. We have to do every year. Then whatever else -- they send you to the range.

Q. Have you ever been required to be retrained in rules and procedures or tactics, after a complaint named you?

A. Not that I know of.

Q. Did you review anything in preparation for this deposition?

A. My sub reports, my 42, memo book, timestamps for the radio transmissions.

Q. What was the item you just

28

Link

mentioned? The 42, is that what you said?

A. Sub reports, 42 --

Q. What is a 42?

A. That is the internal correspondence.

Q. What do you keep in your memo book?

A. Memo book pages, plastic ruler, various inserts for whatever the department requires you to have.

Q. Are you required to carry a memo book?

A. Yes.

Q. What, if anything, do you write in your memo book?

A. Your assignments for the day, cars you stop, precinct conditions, if you take a meal.

Q. Is every officer required to carry a memo book?

A. Uniformed patrol.

Q. Did you carry a memo book on April 12, 2008?

A. Yes, I did.

29

Link

1
2 RQ MR. GERMANO: Call for
3 the production of Officer
4 Link's memo book from April 12
5 2008 and April 13, 2008.

6 Q. What tour were you working on
7 April 12, 2008?

8 A. **3:00 to 11:00.**

9 Q. Did you work overtime that day?

10 A. **I was held over to fill out**
11 the report to reference this.

12 Q. Did you review any video
13 recordings in preparation for your
14 deposition?

15 A. **Video recordings?**

16 Q. Yes.

17 A. **No.**

18 Q. Did you have any conversation
19 with any other officers, or employees of
20 the County, in preparation for your
21 deposition today?

22 A. **Other than just talking about**
23 this, not reviewing anything specific
24 about times or what happened, no.

25 Q. Who did you talk to?

30

Link

1 A. **Probably just about everybody**
2 in the precinct.

3 Q. When was the last conversation
4 you had concerning this matter?

5 A. **This morning when I found out**
6 I was coming here and I didn't know.

7 Q. Who did you speak to?

8 A. **I told people at work around**
9 me I was leaving, so that would be Police
10 Officer Paul Salace, Paula Donnelly, Dana
11 Rodriguez, Richard Steck, Jose Cartas, Jim
12 Brukaleary, Sergeant Shurer (phonetics).

13 Q. Other than that conversation
14 this morning, what other conversations did
15 you have with other employees or
16 personnel?

17 A. **Like I said, nothing specific.**
18 Just I can't believe this happened and
19 going back for another trial.

20 Q. When you said you can't
21 believe this happened, what do you mean by
22 that?

23 A. **My only involvement is about**
24 six minutes and I am sitting in federal
25

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Link

1
2 court. So pretty much, I can't believe
3 this happened.

4 Q. You are aware that a man died
5 on April 12, 2008?

6 A. **Yes, I am.**

7 Q. Do you care?

8 MR. DUNNE: Objection to
9 that.

10 A. **I care that he died. It's a**
11 shame he is dead, but it's just part of my
12 business.

13 Q. Approximately, in your career
14 as a police officer, how many subjects
15 have died in custody while you have been
16 involved?

17 A. **This is my first.**

18 Q. Did you ever seek, as a result
19 of his death, any counseling?

20 A. **No.**

21 Q. Did you ever feel that you
22 needed counseling?

23 A. **No.**

24 Q. Do you recall observing Kenny
25 Lazo on April 12, 2008?

32

Link

1 A. **Yes, I did.**

2 Q. What observations, if any, did
3 you make of Kenny Lazo's face?

4 A. **There was an abrasion on the**
5 cheek bone on the right side of his face.
6 That is about it.

7 MR. GERMANO: Can you
8 mark this as Plaintiff's
9 Exhibit 1?

10 (Photograph was marked as
11 Plaintiff's Exhibit 1 for
12 identification, as of this
13 date.)

14 Q. Officer Link, I am placing
15 Plaintiff's Exhibit 1 in front of you.

16 Do you recognize the man
17 depicted in that picture?

18 A. **Yes, that is Kenny Lazo.**

19 Q. The abrasion that you just
20 indicated on his cheek bone, is that the
21 abrasion in this area of the picture where
22 I am pointing to?

23 A. **Yes.**

24 Q. That would be on the left side
25

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1 Link
2 of Mr. Lazo's face on his left cheekbone,
3 correct?

4 **A. Correct. I thought it was right.**

5 **Q.** After seeing this abrasion,
6 did you have any communications or inform
7 any sergeant, or superior, or supervisor
8 of his condition?

9 MR. DUNNE: The only
10 basis of my objection, and
11 Officer you can answer this,
12 is that there is no reference
13 in time to when this picture
14 was taken and when the Officer
15 observed him.

16 With that objection,
17 answer that as best as you
18 can.

19 **A. I am not sure I understand the**
20 **question.**

21 **Q.** I will rephrase.

22 When you first saw Mr. Lazo
23 you indicated that you saw --

24 **A. Well --**

25 **Q.** At some point you indicated

34

1 Link
2 that you saw an abrasion on his face?

3 **A. Yes.**

4 **Q.** This is the abrasion that you
5 saw, correct? The one that is depicted in
6 Plaintiff's Exhibit 1?

7 **A. Yes.**

8 **Q.** After having seen that
9 abrasion on his face, did you inform any
10 superior officer of Mr. Lazo's injury?

11 **A. At the scene, Sergeant**
12 **Scimone.**

13 **Q.** What did you tell Sergeant
14 Scimone?

15 **A. I basically asked him or told**
16 **him, he is not injured, he is not**
17 **bleeding. Let's just go to the precinct,**
18 **or do you want to go to the precinct.**

19 **Q.** Did you tell that to Sergeant
20 Scimone or did you ask Sergeant Scimone a
21 question?

22 **A. I basically asked because we**
23 **were on the side of a road.**

24 **Q.** Did you tell Sergeant Scimone
25 that you saw the abrasion on Lazo's face?

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1 Link

2 **A. Not specifically.**

3 **Q.** What specifically did you tell
4 Sergeant Scimone?

5 **A. I don't remember my exact**
6 **words, but I basically said, he doesn't**
7 **appear to be injured and in need of**
8 **hospitalization, can we go to the**
9 **precinct.**

10 **Q.** Do you have a medical
11 background?

12 **A. I am trained by Suffolk County**
13 **Police Department as an EMT. Expired.**

14 **Q.** When did it expire?

15 **A. Sometime, probably, around**
16 **2005 maybe.**

17 **Q.** Have you ever sought to renew
18 that?

19 **A. The county schedules the**
20 **recertification. I don't.**

21 **Q.** That was three years it
22 expired prior to this incident, correct?

23 **A. Probably, yes.**

24 **Q.** The marking on Lazo's face,
25 with your background, would you say that

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1 Link

2 that was an injury?

3 **A. The abrasions?**

4 **Q.** Yes.

5 **A. Yes.**

6 **Q.** Do you see the area in the
7 photograph under Lazo's nose?

8 **A. Yes.**

9 **Q.** Does that appear to be blood?

10 **A. It appears to be blood that**
11 **was not there at the time I first met him.**

12 **Q.** Do you see in the photograph
13 Mr. Lazo's left eye and the dark circles
14 around his left eye?

15 **A. Yes.**

16 **Q.** Is that a fair representation
17 that it appears to be a dark circle?

18 **A. It appears to be a bruise, yes.**

19 **Q.** Did you notice that bruise on
20 Mr. Lazo?

21 **A. The bruise was not apparent**
22 **either when I first met him.**

23 **Q.** The portion on Mr. Lazo's left
24 ear depicted in the photograph --

25 MR. GERMANO: Withdrawn.

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Link

1 Q. Do you see the left ear of
2 Mr. Lazo depicted in the photograph?

3 A. Yes.

4 Q. Does his left ear appear to
5 have dark marks on it?

6 A. Yes, but I can't tell if it's
7 dirt or a bruise.

8 MR. GERMANO: Mark this
9 as Plaintiff's Exhibit 2.

10 (Photographs were marked
11 as Plaintiff's Exhibit 2 for
12 identification, as of this
13 date.)

14 Q. Officer, I am placing before
15 you Plaintiff's Exhibit 2. Another series
16 of photographs.

17 Do you see the photograph that
18 depicts Lazo's left ear on the upper
19 right-hand quadrant?

20 A. Yes.

21 Q. Does his ear appear to be
22 marked there?

23 A. Yes, there is some sort of
24 mark or prior injury.
25

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Link

1 Q. Did you notice that mark when
2 you came in contact with Mr. Lazo?

3 A. No.

4 Q. If you look at the first
5 quadrant, the upper left-hand side, do you
6 see the lower lip of Mr. Lazo?

7 A. Yes.

8 Q. Does that appear to be a cut
9 on his lip?

10 A. It appears to be a brown mark.

11 Q. Did you notice that brown mark
12 when you came into contact with Mr. Lazo
13 at any point in time?

14 A. No.

15 Q. In the lower left-hand
16 quadrant, do you see, above the ruler
17 looking contraption, the marking on
18 Mr. Lazo's right side of his forehead?

19 A. Yes.

20 Q. Does that appear to be a
21 bruise and a cut?

22 A. Could be, yes.

23 Q. Did you notice that when you
24 had contact with Mr. Lazo on April 12,
25

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Link

1 2008?

2 A. No.

3 Q. Having viewed Plaintiff's
4 Exhibit 1 and the abrasion that you
5 identified, is it your responsibility --
6 MR. GERMANO: Withdrawn.

7 Q. Do you have a responsibility
8 to inform supervising officers of any
9 injuries on subjects?

10 A. Yes.

11 Q. Did you inform a supervising
12 officer of the injury on Mr. Lazo?

13 A. At the scene?

14 Q. At any time.

15 A. At the scene there was a
16 sergeant there, so I don't have to notify
17 him of something he observes and at the
18 precinct I just lodged him and left.

19 Q. Prior to April 12, 2008, did
20 you have any contact with Mr. Lazo?

21 A. No.

22 Q. Had you ever seen him before?

23 A. No.

24 Q. Had you ever heard of his
25

40

Link

1 name?

2 A. No.

3 Q. Who was your supervisor on
4 April 12, 2008?

5 A. I believe Sergeant Welschimer.

6 Q. How do you spell his name?

7 A. W-E-L-S-C-H-I-M-E-R.

8 Q. What is his rank?

9 A. Sergeant.

10 Q. Is he the sergeant of a
11 particular unit?

12 A. Patrol Sergeant.

13 Q. On that date, did you have a
14 partner?

15 A. No.

16 Q. What were your general tasks
17 and duties on that day?

18 A. Uniform patrol.

19 Q. What vehicle were you
20 operating?

21 A. I believe, I was assigned to
22 Sector 314 and I believe I had the 314
23 car, not a spare car.

24 Q. What is Sector 314?
25

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Link

A. That is the area of the precinct that I cover.

Q. What is that area?

A. Bay Shore, Brightwaters, West Bay Shore.

Q. Does the sector that you patrol in change regularly?

A. No.

Q. How long had you been patrolling that sector?

A. Probably 2002.

Q. On April 12, 2008, did you have any general -- did you have any purpose that day, or mission?

A. Uniform patrol.

Q. How was it that you came into contact with Kenny Lazo on April 12, 2008?

A. I responded to the radio transmission of Detective Talt saying that the other units needed an assist on the parkway.

Q. Was the radio transmission from Detective Talt directed to you?

A. No.

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Link

Q. Who was it directed to, if you know?

A. The Third Precinct.

Q. Approximately what time was this?

A. I don't know the time off the top of my head, without reviewing some paperwork, 8:30, 8:20 something.

Q. Was it light out?

A. No.

Q. Was it dark?

A. It probably just turned dark. It was April.

Q. Where were you located when you received or heard the radio transmission from Detective Talt?

A. On Munsy Road just east of Robert Moses Parkway.

Q. When you heard the transmission what, if anything, did you do?

A. I wasn't sure of the exact location so I started heading towards the Bay Shore Road ramp of the Robert

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Link

Moses/Southern State Parkway interchange there.

Q. What direction were you heading on Munsy Road when you received the call?

A. Eastbound.

Q. When you heard the call, did you have to direct your vehicle in any different direction?

A. No.

Q. From Munsy Road, where did you go?

A. Made a left on Manor Lane, left on Bay Shore Road, and right onto the entrance ramp.

Q. Which entrance ramp?

A. On Bay Shore Road. I guess that is considered northbound going onto northbound Robert Moses, which empties onto eastbound Southern State Parkway. It's kind of a mess over there.

Q. When you were on Bay Shore Road and you turned right onto the entrance ramp, there are two entrance

44

Link

ramps. Did you pass the first entrance ramp and then turn right onto the second entrance ramp or did you turn right onto the first entrance ramp?

A. There is only one entrance ramp for the direction I was going.

Q. I understand.

The question, did you turn right on the first entrance ramp or the second entrance ramp?

A. I am still lost. There is only one entrance ramp for the direction I needed to go.

If you are heading from the Third Precinct into the First on Bay Shore Road, there is one ramp, and only one ramp to go in the direction.

The next ramp is to go in the opposite direction on Robert Moses.

MR. GERMANO: We'll mark this as Plaintiff's Exhibit 3.

(Map was marked as Plaintiff's Exhibit 3 for identification, as of this

45

Link

date.)

Q. I am showing you Plaintiff's Exhibit 3. Which is a depiction of a map from the Suffolk County atlas, Hagstrom.

A. **I was sitting about where that C1 is.**

Q. That is Munsy Road. From Munsy Road you indicated you proceeded --

A. **To Manor Lane and I made a left. Manor Lane, Bay Shore Road and made a left. That is the first and only ramp that I could have taken and that is what I took.**

Q. So that would have been once you take that ramp, that is the Southern State Parkway eastbound ramp?

A. **Yes.**

Q. Then you have the option to continue eastbound on the Southern State Parkway or take the Sagtikos northbound?

A. **Correct.**

Q. Where did you drive next when you took the ramp, in that direction?

A. **I made it a few hundred feet**

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Link

up and that is where they were, prior to the Southern State Parkway.

Q. So they were a few hundred feet up before the road forked for the Sagtikos northbound or the Southern State Parkway eastbound?

A. **Correct.**

Q. That would have been after exit 41 and before exit 42, correct?

A. **Correct.**

Q. Officer, I am going to place Plaintiff's Exhibit 3 in front of you just for one last question.

This mark here, this pen, is that about the area where you saw the stop?

A. **No. Over here (indicating), directly below the A in parkway.**

Q. So it was right off the entrance ramp?

A. **It was on the entrance ramp, yes.**

Q. You didn't actually yield into the parkway at that point?

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Link

A. **No.**

Q. Do you know if there are traffic cameras in that region?

A. **Not that I know of.**

Q. Do you know if in April of 2008 there were traffic cameras in that region?

A. **No.**

Q. Are you aware if there were traffic cameras generally on that parkway?

A. **I have never seen any, so, no.**

Q. Approximately what time did you arrive at the scene?

A. **I think it took me just under a minute to get there from the first radio transmission.**

Q. That first radio transmission was approximately 8:20, 8:30?

A. **I am not sure of the time. We have to look at the CAD to get those time stamps.**

MR. GERMANO: Off the record.

(Discussion off the

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Link

record.)

Q. When you arrived, how many vehicles did you see pulled over?

A. **Just the -- coming from the rear was the gray SUV that Detective Newton was operating, a marked COPE unit, and parked in front of the COPE unit was Mr. Lazo's Cadillac.**

Q. What color was the Cadillac?

A. **I believe blue.**

Q. What officers were at the scene, when you first arrived?

A. **Sergeant Scimone, Officer Judge, and Detective Newton.**

Q. Was Talt there?

A. **No.**

Q. Where did you park your car?

A. **I left my car in the roadway to kind of give us a safety zone since they were so close to the roadway.**

Q. How far back were you from the closest vehicle?

A. **I was just about abreast to the COPE unit car, maybe a little forward,**

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Link

and slightly behind Mr. Lazo's car.
Actually, no. I was abreast of Mr. Lazo's car because he was in front of it.

Q. When you say abreast, what do you mean?

A. I was parked alongside. He was on the grass. I was in the roadway.

Q. If your car was parked alongside of Lazo's car in the roadway, would that mean that the gray SUV and the COPE unit are behind your car?

A. Directly behind his car on the grass. I was the only car in the roadway.

Q. Is the SUV in front of the COPE unit or behind?

A. Behind.

Q. Is it directly behind the COPE unit?

A. Might have been off to one side.

Q. In terms of the COPE unit, was your rear bumper in front of the COPE unit's front bumper?

A. I don't recall.

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Link

Q. Who was the first person you saw when you pulled your car up next to the blue Cadillac?

A. I saw all four of them.

Q. What position were they in?

A. Mr. Lazo was on the ground, handcuffed, and the three others were standing around breathing heavy, bending over.

Q. Where were they standing?

A. In front of the cars along -- near Mr. Lazo.

Q. Was anybody standing directly next to Mr. Lazo?

A. Directly next to, I am sure somebody was. They were all within 8 feet of him ten feet of him, but nobody was on top of him.

Q. Did you remain in your car?

A. No.

Q. Did you have your emergency lights on?

A. Yes.

Q. Did you actually see the

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Link

handcuffs that were on Mr. Lazo?

A. At that moment, no.

Q. At that moment, what was Lazo's position?

A. I believe he was laying on the ground or some sort of form of lying on the ground.

Q. Where on the ground was he lying in terms of, was he lying on the road, was he lying on the grass?

A. On the grass.

Q. Where was the blue Cadillac in terms of where his body was?

A. I believe he was in front of the car.

Q. Where was Officer Judge when you saw Lazo lying in front of the car?

A. Specifically in relation to Mr. Lazo, I don't know. He was nearby. All three of them were nearby.

Q. Were they in front of the Cadillac or on the side?

A. All in front.

Q. Was Mr. Lazo lying on his

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Link

stomach, his back, or on his side?

A. Either on his stomach or kind of on his hip.

Q. If he was lying on his hip, does that mean that one of his shoulders was raised?

A. Could have been.

Q. Do you recall what direction his chest was facing?

A. I believe his head was closet to the car. I am not sure.

Q. In which direction were his feet?

A. The opposite direction.

Q. So he was lying in line with the car, is that a fair way to put it?

A. I guess. I don't remember specifically, yes.

Q. If that was the case, was his right arm closest to the roadway?

A. I am not sure, I guess.

Q. What was Mr. Lazo wearing?

A. He didn't have a shirt on. He had pants on. I believe some sort of

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1 Link
 2 black jeans or something, and socks.
 3 **Q.** Did he have shoes on?
 4 **A.** No.
 5 **Q.** Did you see his shoes anywhere
 6 in the area, if you recall?
 7 **A.** No.
 8 **Q.** Did you ever learn where his
 9 shoes may have gone?
 10 **A.** No.
 11 **Q.** When you exited your vehicle,
 12 did you have any conversations with
 13 anybody?
 14 **A.** I walked up and basically
 15 asked is everybody okay. They kind of
 16 responded. At that point, I asked the
 17 sergeant as my previous statement was,
 18 because of the roadway we were on, there
 19 is a lot of high speed traffic, and I
 20 didn't want to get hit by a car so I said
 21 let's go to the precinct.
 22 **Q.** In terms of feet, how far was
 23 Mr. Lazo from the roadway?
 24 **A.** Maybe six.
 25 **Q.** 6 feet?

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1 Link
 2 **A.** Yes.
 3 **Q.** Is there a shoulder there?
 4 **A.** There is the shoulder. There
 5 is grass, small curb, and I believe two
 6 lanes, two lanes merging down into one.
 7 **Q.** Was there 6 feet of grass
 8 between Mr. Lazo and the curb?
 9 **A.** Give or take, approximately.
 10 **Q.** In terms of feet, how wide is
 11 the shoulder?
 12 **A.** The grass area?
 13 **Q.** Well, from the --
 14 **A.** There is no designated
 15 shoulder on the roadway. I am parked in a
 16 lane.
 17 **Q.** Is there a fog line?
 18 **A.** I believe there was a solid
 19 white line somewhere near my right tires
 20 of my vehicle.
 21 **Q.** What was the distance between
 22 the fog line and the curb?
 23 **A.** Probably 4 inches.
 24 **Q.** You said you walked up, where
 25 did you walk to?

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1 Link
 2 **A.** To the group of them standing
 3 near Mr. Lazo.
 4 **Q.** When you asked if everyone was
 5 okay, did you direct your question to
 6 anyone in particular?
 7 **A.** No.
 8 **Q.** What were your observations of
 9 Officer Judge at that time?
 10 **A.** He like everybody else was
 11 breathing heavily. Their clothes was
 12 disheveled, and it was quite apparent that
 13 they were just in a struggle.
 14 **Q.** Was Officer Judge holding
 15 anything in his hand?
 16 **A.** No.
 17 **Q.** What were your observations of
 18 Sergeant Scimone?
 19 **A.** The same.
 20 **Q.** By the same, you mean his
 21 clothes were disheveled?
 22 **A.** He was breathing heavy and
 23 they were moving about.
 24 **Q.** What were your observations
 25 about Detective Newton?

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1 Link
 2 **A.** Also the same.
 3 **Q.** Did any officer appear to be
 4 injured?
 5 **A.** I believe Officer Judge was
 6 complaining about something to do with one
 7 of his hands.
 8 **Q.** Do you remember hearing
 9 Officer Judge complaining about anything
 10 specific about one of his hands?
 11 **A.** No.
 12 **Q.** Did you ask Officer Judge if
 13 he was hurt?
 14 **A.** No.
 15 **Q.** Did you ask Sergeant Scimone
 16 if he was hurt?
 17 **A.** No.
 18 **Q.** Did you ask Detective Newton
 19 if he was hurt?
 20 **A.** No.
 21 **Q.** At any point in time, while
 22 you were at the scene, did you come in
 23 contact with Detective Talt?
 24 **A.** No.
 25 **Q.** After you spoke to the police

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Link

officers at the scene, did you speak to
Kenny Lazo?

A. No.

Q. Did you ask the police
officers and the other officers there what
occurred?

A. No.

Q. Did they tell you?

A. No.

Q. The next conversation you had
was with Sergeant Scimone, correct?

A. Yes, I said, can we leave
because I didn't like where we were.

Q. Did you in fact transport
Mr. Lazo?

A. Yes, I did.

Q. Did anybody in particular
direct you to transport him?

A. No.

Q. When you arrived at the scene,
what made you assume that it was your
responsibility to transport him?

A. I just volunteered.

Q. What did Sergeant Scimone say

58

Link

to you when you volunteered?

A. Basically, let's get out of
here.

Q. Prior to that conversation,
did you have any conversations or
discussions with Kenny Lazo?

A. No.

Q. Did Kenny Lazo move from the
position you first saw him in until that
point in time?

A. He was moving about and
started complaining that he was arrested,
and kind of talking trash to the officers,
that it took three of them to get him
handcuffed or in custody or whatever.

Q. This was before you went over
to him?

A. Yes.

Q. Was Kenny Lazo directing those
statements to anybody in particular?

A. No.

Q. Did any police officer,
sergeant, or detective respond to Kenny
Lazo?

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Link

A. No.

Q. Approximately, how long was
Kenny Lazo there while you were there?

A. Maybe a minute.

Q. In total, how long were you at
the scene?

A. Just a couple of minutes.

Q. Did you at some point go over
to Kenny Lazo?

A. Yes.

Q. Did any other officer tend to
him with you?

A. We didn't tend to him.

Officer Judge helped me get him on his
feet to walk him to my car.

Q. You helped him up?

A. Yes.

Q. What led you to help Kenny
Lazo up?

A. He was handcuffed.

Q. In what position was he when
you walked over him?

A. I think he might have been
seated at the time.

60

Link

Q. What was he seated on his
butt, his knees or something else?

A. I believe his butt.

Q. When Mr. Lazo changed his
position from lying down to sitting on his
butt, did that concern anybody?

A. No.

Q. Was Mr. Lazo a threat?

A. No, he was handcuffed.

Q. When you say you helped
Mr. Lazo up, how did you help him up?

A. We each grabbed one arm under
his shoulder and helped him onto his feet.

Q. What arm did you grab?

A. I am not sure.

Q. Were you standing closest to
the roadway or was Officer Judge standing
closest to the roadway?

A. I am not sure.

Q. Are you right handed or left
handed?

A. I am right handed.

Q. Do you recall if it is normal
for you to use your right hand to help

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Link

1 someone up?

2 MR. DUNNE: I object to
3 whatever normal is.

4 **A. He was large enough where I**
5 needed both of my hands to lift him up.

6 **Q.** But at this point you don't
7 recall what side you grabbed?

8 **A. No.**

9 **Q.** Did you have any conversation
10 or did you say anything to Kenny Lazo at
11 that point in time?

12 **A. I said come with me, and in no**
13 specific terms, put you in my car and take
14 you to the precinct.

15 **Q.** Did Officer Judge say anything
16 to Kenny Lazo at that point in time?

17 **A. Not that I recall.**

18 **Q.** Did he say anything to you?

19 **A. No.**

20 **Q.** Did he acquiesce to be brought
21 to your car?

22 **A. Yes, he went voluntarily.**

23 **Q.** Did you assist Mr. Lazo over
24 to the car?
25

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Link

1 **A. Assist, no. He walked on his**
2 own.

3 **Q.** After Officer Judge and
4 yourself helped him up, where did Officer
5 Judge go?

6 **A. He stayed with me until we**
7 walked to the car. When Kenny Lazo sat
8 down, he was behind me somewhere.

9 **Q.** Did you walk side by side with
10 Kenny Lazo, behind him, or in front of
11 him?

12 **A. Alongside.**

13 **Q.** On his right side or left
14 side?

15 **A. I don't remember. I stayed by**
16 his side in case he falls. He can't break
17 his fall with his handcuffs.

18 **Q.** Did you open the car door?

19 **A. I don't recall who opened the**
20 car door.

21 **Q.** What side of the car was
22 Mr. Lazo brought to?

23 **A. Passenger side, rear seat.**

24 **Q.** That was the side adjacent to
25

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Link

1 the area at this scene?

2 **A. Yes.**

3 **Q.** Did Officer Judge help place
4 Mr. Lazo in the vehicle?

5 **A. No. I opened the front door,**
6 moved the passenger seat forward, and he
7 got in the back seat, and that is where he
8 stayed.

9 **Q.** You opened the front door, but
10 you don't recall who opened the passenger
11 back rear door?

12 **A. I don't remember, but more**
13 than likely it was probably me.

14 **Q.** If you were standing on
15 Mr. Lazo's right side to open the door,
16 then you would have seen the right side of
17 Mr. Lazo's face, is that correct?

18 **A. One more time?**

19 **Q.** If you were standing on the
20 right side of Mr. Lazo to open the car
21 door?

22 **A. His right side?**

23 **Q.** Yes --

24 **A. Yes.**
25

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Link

1 **Q.** -- then you could have seen
2 the right side of Mr. Lazo's face, right?

3 **A. I could have.**

4 **Q.** When did you first notice the
5 abrasions on Mr. Lazo's face?

6 **A. When he was getting seated in**
7 the car he had to face out and sit back.

8 **Q.** Mr. Lazo's right side would
9 have been facing the passenger rear door,
10 correct?

11 **A. At what point?**

12 **Q.** When he was seated.

13 **A. Yes.**

14 **Q.** It was at that point in time
15 that you noticed the abrasion on his left
16 cheek, correct?

17 **A. I was not sure which cheek it**
18 is. What does the picture show, right
19 cheek or left cheek?

20 **Q.** It was at that point when he
21 was seated that you saw the abrasion?

22 **A. Yes. Facing out.**

23 **Q.** Did Mr. Lazo say anything to
24 you?
25

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Link

A. No.

Q. Did you ask Mr. Lazo, from the point in time you helped him up and walked him to the car and placed him in the car, if he needed medical attention?

A. No, I did not.

Q. Did you ask Mr. Lazo if he needed medical attention when you first arrived at the scene, before you stepped over to him?

A. No.

Q. While you were at the scene, were you informed that force was used in order to subdue Mr. Lazo?

A. No, I just assumed it was.

Q. Having assumed that force was used and noticing the abrasion on Mr. Lazo's face, did you have a responsibility to inform a sergeant that he appeared to be injured?

A. I would operate under the assumption that since the sergeant was at the scene, he knew.

Q. I understand but the question

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Link

is, did you have a responsibility?

MR. DUNNE: He already answered that. Asked and answered. He said, yes.

A. Yes.

Q. Did you do any further assessment of Mr. Lazo at the scene?

A. Medically?**Q.** Yes.**A. No.**

Q. Did you have any further observations of Mr. Lazo at the scene?

A. Not at the scene, no.

Q. After Mr. Lazo was placed in the vehicle, what did you do?

A. Somebody behind me, I am not sure, it might have been Billy Judge, said that he was not checked for weapons, his waistband or something. That is when I squeezed his pockets, I felt what was money or whatever. I checked his waistband or whatever and I found the one large bag of narcotics behind his belt buckle.

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Link

Q. He was seated in the car at the time you frisked him?

A. Yes.

Q. What did you do after you found the money and the bag?

A. The money I left in the pockets. I had to open the belt buckle and his pants to pull the bag out and I believe I gave it to Detective Newton.

Q. What did you do next?

A. I told Sergeant Scimone I was going to the precinct.

Q. What, if anything, did Sergeant Scimone say to you?

A. Nothing. Basically, we'll all see you back at the precinct.

Q. Did Sergeant Scimone tell you that Mr. Lazo required medical attention?

A. No, he did not.

Q. In a situation when force is used and an injury occurs on a subject, do you have a responsibility to bring the individual to hospital for medical evaluation?

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Link

MR. DUNNE: Objection to the form of the question, but Officer, go ahead and answer the best that you can.

A. Yes, when the person appears to be injured and in need of medical attention I will bring them, like I have done in the past, directly to the hospital.

Mr. Lazo had an abrasion that was the only thing visible on his face at the time I was there.

Q. Did you ask him if he was injured?

A. No, I did not.

Q. Is it your responsibility to ask him if he was injured?

A. No, it is not.

Q. Assuming that force was used and that he had an abrasion on his face that you saw, and you previously indicated that you assumed force was used, was it your responsibility to ask him if he needed medical attention?

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Link

A. Again, no it is not.

Q. Was it your responsibility to just bring him directly to seek medical attention?

A. If I believe that he is injured to the point where he is having difficulty breathing or he is bleeding excessively, I would bring him directly to the hospital. Not limited to those two things.

Q. Looking at Plaintiff's Exhibit 1, you indicated that he had a bruise around his eye and he had the abrasion --

MR. DUNNE: I am going to renew my objection. These are post mortem photographs and they were taken days after Officer Link's contact with Mr. Lazo. Go ahead and answer his questions.

Q. Do you recall seeing the bruise around Mr. Lazo's eye?

A. There was no bruise there when I first saw him.

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Link

Q. Do you recall if there was the mark above his left eyebrow when you transported him?

A. Not that I recall.

Q. Do you recall if there was a mark just below his right eyebrow, but above his eye?

A. Not that I recall.

Q. So, it is fair to say that the only mark that you recall is the abrasion on his left cheek bone?

A. Yes.

Q. After you provided Detective Newton with the bag, what did you do next?

A. After I gave him the bag of drugs I removed from Mr. Lazo's pants, I got in my vehicle, made a radio transmission that I was going to the third precinct, and I proceeded there.

Q. What, if anything, did you state in the radio transmission?

A. Probably something along the lines of 314, 26 and a 32 to the precinct.

Q. Can you describe what a 26 is?

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Link

A. Transporting a subject to the precinct.

Q. In your radio transmission to headquarters, did you indicate that force was used on the subject?

A. No.

Q. Did you state that Mr. Lazo had an abrasion on his face?

A. No.

Q. Did you state to headquarters that Mr. Lazo required medical attention?

A. No.

Q. After you made the radio transmission, what did you do next?

A. I proceeded up the rest of the ramp, got on the Southern State Parkway eastbound, exited Fifth Avenue northbound, northbound on Fifth Avenue to the precinct.

Q. Approximately, how long did that take you?

A. Probably there within a minute.

Q. When you were transporting

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Link

Mr. Lazo, were your lights on?

A. No.

Q. Emergency lights?

A. No.

Q. When you arrived at the precinct, what did you do?

A. I parked in the back parking lot of the precinct. I opened the rear door and I assisted Mr. Lazo getting out of the vehicle.

Q. During the transport did Mr. Lazo say anything to you?

A. Nothing directly to me. He was just complaining how he fucked up and he couldn't believe he got arrested.

Q. Were those his words?

A. No, I am just summing it up.

Q. Do you recall specifically what his words were?

A. No, I don't.

Q. Did you say anything to Mr. Lazo during the transport?

A. The only thing I told him to do was he was moving about in the back

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Link

1 seat and I told him to stop.

2 **Q.** How was he moving about in the

3 back seat?

4 **A.** He was just fidgeting and

5 sliding around and like other prisoners

6 have done in the past to secrete something

7 in my back seat.

8 **Q.** Did you ask him why he was

9 sliding around?

10 **A.** No. The ride didn't take that

11 long.

12 **Q.** Did Mr. Lazo say he was hurt?

13 **A.** No, he did not.

14 **Q.** Stepping back a moment. When

15 you helped Mr. Lazo up and walked him to

16 the car, how did Mr. Lazo walk?

17 **A.** He walked fine, under his own

18 power.

19 **Q.** Did you have any observation

20 about Mr. Lazo's head positioning, was it

21 forward, back, to the side?

22 **A.** It was moving.

23 **Q.** While you were transporting

24 Mr. Lazo, did you notice his posture in

74

Link

1 the back seat other than him sliding

2 around?

3 **A.** He was upright, seated.

4 **Q.** Was he clipped in?

5 **A.** Seat belted?

6 **Q.** Yes.

7 **A.** Yes.

8 **Q.** Do you recall if he ever put

9 his head back to rest?

10 **A.** Not that I recall.

11 **Q.** Did you ever request that

12 another officer assist in the transport?

13 **A.** No.

14 **Q.** Is it your responsibility to

15 request that another officer assist in the

16 transport after force is used on a

17 subject?

18 **A.** No.

19 **Q.** Is it your responsibility to

20 ask for assistance in a transport if force

21 is used on a subject and that subject is

22 injured as a result?

23 **A.** No.

24 **Q.** After you arrived in the back

25

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Link

1 lot of the precinct, what did you do next?

2 **A.** Like I said, I helped him out

3 of the vehicle. When he stood, his pants

4 fell to his ankles and out from his boxer

5 shorts fell another large bag of

6 narcotics.

7 **Q.** Do you know what those

8 narcotics were?

9 **A.** At the time, no.

10 **Q.** Do you know what they are now?

11 **A.** I believe the bag was cocaine

12 of some form or another.

13 **Q.** Once the bag fell out, what

14 did you do?

15 **A.** I asked Mr. Lazo to completely

16 step the rest of the way out of his pants

17 and once he was off to the side, I picked

18 up his pants and the drugs.

19 **Q.** Were you outside or was it a

20 covered lot?

21 **A.** Outside.

22 **Q.** Was there any other officer

23 around?

24 **A.** Not that I know of.

25

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Link

1 **Q.** What, if anything, did you do

2 with Mr. Lazo's pants?

3 **A.** I brought them into the

4 precinct with me.

5 **Q.** Where did you bring Mr. Lazo?

6 **A.** Walked up to the rear door of

7 the precinct. Officer Tom Parsons was

8 there. He opened the door for me. We

9 walked inside. I stopped briefly to put

10 my gun in the gun locker, and then Officer

11 Parsons and I walked Mr. Lazo back to the

12 detective squad.

13 **Q.** What is the detective squad?

14 **A.** It's the room where the

15 detectives work.

16 **Q.** What, if anything, did you do

17 with Mr. Lazo?

18 **A.** I brought him into the

19 interview room. I seated him down. I

20 helped him remove one of his earrings. He

21 removed the other one. I believe, that is

22 all he had on. I put his left hand in the

23 handcuff on the desk. There is another

24 handcuff on the wall that was broken, so I

25

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1 Link
 2 left his right hand free.
 3 **Q.** Officer Tom Parsons, is his
 4 rank police officer?
 5 **A.** Yes.
 6 **Q.** What is his duty or
 7 responsibility?
 8 **A.** Uniform patrol on steady
 9 midnights.
 10 **Q.** Did you make any stops prior
 11 to reaching the detective squad room?
 12 **A.** No.
 13 **Q.** In order to get to the
 14 detective squad room, did you have to
 15 climb any stairs?
 16 **A.** Outside the precinct, there
 17 are maybe three steps going up.
 18 **Q.** After those three steps --
 19 MR. GERMANO: Withdrawn.
 20 **Q.** How did Mr. Lazo appear while
 21 climbing those three steps?
 22 **A.** He walked on his own.
 23 **Q.** When you say he walked on his
 24 own, did he walk on his own until you
 25 reached the detective squad room?

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1 Link
 2 **A.** Yes.
 3 **Q.** Where were your hands?
 4 **A.** If anything it might have been
 5 on one of his arms, just guiding him
 6 through the hallway.
 7 **Q.** Was Mr. Lazo swaying while he
 8 was walking?
 9 **A.** No.
 10 **Q.** Was his head moving around
 11 while he was walking?
 12 **A.** Yes.
 13 **Q.** How was his head moving?
 14 **A.** He was just looking about. He
 15 looked into the uniform squad room windows
 16 as we walked by.
 17 **Q.** Did he say anything?
 18 **A.** No.
 19 **Q.** From the time that you arrived
 20 at the precinct until you reached the
 21 squad room, did you have any conversation
 22 with him?
 23 **A.** No.
 24 **Q.** Did you give him any
 25 direction?

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1 Link
 2 **A.** Not that I recall. I might
 3 have told him to turn one way or the other
 4 in the hallway, but that is it.
 5 **Q.** What about when you saw the
 6 bag fall from his boxers?
 7 **A.** That was outside.
 8 **Q.** Did you have any conversation
 9 with him then?
 10 **A.** Yes. I told him to step out
 11 of his pants.
 12 **Q.** Other than telling him to step
 13 out of his pants?
 14 **A.** No.
 15 **Q.** Did Mr. Lazo say anything to
 16 you from the time he stepped out of his
 17 pants until the time he reached the
 18 detective squad room?
 19 **A.** No.
 20 **Q.** Once you reached the detective
 21 squad room, did you have any conversation
 22 with Mr. Lazo?
 23 **A.** Probably directed him to take
 24 off his earrings.
 25 **Q.** He responded, right?

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1 Link
 2 **A.** He took the one off and I
 3 helped him get the other one off, because
 4 there was something wrong with the thing
 5 on the back.
 6 **Q.** Did he ask you to help him
 7 take the earring off?
 8 **A.** Probably not. He was probably
 9 just taking too long, so I took it off for
 10 him.
 11 **Q.** Do you recall having any
 12 conversation with Mr. Lazo?
 13 **A.** Nothing specific, no.
 14 **Q.** Do you recall hearing him
 15 speak to you?
 16 **A.** He was still complaining about
 17 being arrested, just muttering. I wasn't
 18 paying attention.
 19 **Q.** Was he muttering in the
 20 hallways or just in the detective squad
 21 room?
 22 **A.** Probably throughout the whole
 23 thing.
 24 **Q.** When you say he was muttering,
 25 can you describe what muttering is?

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Link

A. Just complaining about being

arrested. Nothing that I was paying attention to. It was not my arrest.

Q. Was he speaking loudly?

A. No.

Q. Was he speaking softly or somewhere in between?

A. Probably somewhere in between.

Q. Was his speech high pitched or low?

A. I don't recall.

Q. When you reached in to help Mr. Lazo take the earring off, was that his left ear or right ear?

A. I am not sure which one. I just remember they were square checkerboard things.

Q. Did you notice if there were any markings on Mr. Lazo's ear?

A. Nothing that was apparent to me.

Q. Being close to take the earring off of Mr. Lazo's ear, did you notice if there was any blood on Mr. Lazo's face, neck, or collar?

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Link

A. No blood that was running. He

was dirty. He was sweaty. He had scuff on his face. There were red marks that I guess you would normally get from wrestling with somebody, but --

Q. Where did you see dirt?

A. All over him.

Q. When you say all over him, do you mean all over his body or all over his face?

A. Mainly on his back and chest from apparently rolling around in the grass.

Q. He was shirtless at this time?

A. Yes.

Q. You said there was no running blood, was there dry blood?

A. Just what I would call road rash or whatever the abrasions was. I didn't see any lacerations.

Q. Other than the road rash, did you see any other red marks on Mr. Lazo's body or face?

A. No. Just what I said. He had

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Link

red marks that you would normally get from wrestling around with somebody.

Q. Where were the red marks?

A. In various parts. Nothing that was from a blow. He looked like he was in a wrestling match.

Q. Were the red marks from the neck up or from the neck down?

A. Probably both. Probably had some on his arms from where they were struggling, trying to get his arms behind his back.

Q. Were the red marks in the shape of a line, or a circle, or something else?

A. Not a line, just -- not a perfect circle either, just a mark.

Q. The red mark on the arm that you saw, what was the shape of the red mark?

A. Mark as if somebody was grabbing on to his arm, forcefully trying to wrench it behind his back to get handcuffs on.

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Link

Q. Did you see the print of a hand?

A. No.

Q. Did you see the print of what could have been a flashlight?

A. No, that would have showed up in a straight line.

Q. Approximately, how long was the mark on his arm?

A. I don't recall.

Q. Was it more than an inch?

A. More than likely if I was able to see it.

Q. More than 5 inches?

A. I would have to say, no.

Q. It was between 1 inch and 5 inches?

A. Yes.

Q. Where else did you notice marks on his body?

A. That is about it.

Q. Just on his arm?

A. No, like I said, he had splotches on him. Could have been from

85

Link

him being out of shape and his skin was getting splotchy.

Q. Where on his body did you notice --

A. **Various parts of his body** above his waist because he didn't have a shirt on. That is why I was able to see.

Q. Can you direct me to where on his body?

A. **No, I cannot.**

Q. Was it on his chest or on his back?

A. **Could have been on his chest** and his back.

Q. Do you recall if you saw more than five marks on his body?

A. **No, I can't.**

Q. Was it more than one mark?

A. **More than likely, yes.**

Q. Was it less than ten marks?

A. **Absolutely.**

Q. It was between one and ten marks?

A. **No, I would say closer to one** and five.

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Link

Q. Between one and five marks?

A. **Yes.**

Q. Did you see any marks on his neck?

A. **No.**

Q. Did you see any marks on his forehead?

A. **Other than the abrasion, no.**

Q. Was there an abrasion on his forehead?

A. **No, just the one on his face.**

Q. My question is, was there any mark of any kind on his forehead?

A. **No.**

MR. DUNNE: Asked and answered this twice before.

MR. GERMANO: He just misspoke. I was clarifying it.

A. **No, I did not see any other** abrasions. Whether he was red and splotchy from the struggle, I don't know.

Q. After you placed, after you helped Mr. Lazo remove his earrings, what did you do next?

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Link

A. **I put the earrings on the desk** outside the door with his pants. I gave Detective Talt the drugs and I left and went to the hospital to check on Officer Judge.

Q. Did you have any conversations or discussions with any other officers besides Tom Parsons when you were at the precinct?

A. **No.**

Q. When was the first time you came in contact with Detective Talt?

A. **In the detective squad room.**

Q. What, if anything, did you say to him?

A. **I just handed over the drugs** and said, I found these. They were in his pants when they fell out.

Q. What did Detective Talt say to you, if anything?

A. **Nothing that I recall.**

Q. When you left Mr. Lazo who was in the room with him?

A. **Nobody.**

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Link

Q. What time did you leave Mr. Lazo?

A. **I don't know what the specific** time was. My whole involvement was approximately six minutes.

Q. Six minutes from what point to what point?

A. **From the point I made the** radio transmission that I was going to go help to the point I left the precinct was probably -- actually no. I got to the precinct six minutes so, probably about 15 minutes total, maybe 12.

Q. So from six to nine minutes you were in the precinct?

A. **Give or take, not that long.**

Q. You only spoke to Detective Talt and Officer Parsons, and no one else?

A. **Yes.**

Q. When you left Mr. Lazo in the squad room, who, if anyone, did you tell you were leaving?

A. **I told Detective Talt. He was** in the room and I was leaving.

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Link

1
2 **Q.** Did you direct or have any
3 conversation with Detective Talt about
4 remaining with Mr. Lazo?

5 **A. No.**

6 **Q.** Was Mr. Lazo left alone at any
7 point in time after you left him?

8 **A. After I left him, I left the**
9 building so I could not know if he was
10 alone.

11 **Q.** Did you at any point in time
12 leave Mr. Lazo alone while you were in the
13 building?

14 **A. No.**

15 **Q.** So the first person, the first
16 officer that came into contact with
17 Mr. Lazo after you handcuffed, transported
18 him, was Detective Talt?

19 **A. The first person to come in**
20 contact with him after I put him in
21 whatever interview room that is, was
22 Detective Talt. From the transport to
23 that point Officer Parsons was with me.

24 **Q.** Did you have any other
25 conversations with Detective Talt?

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Link

1 **A. No.**

2 **Q.** Did you tell Detective Talt
3 that Mr. Lazo had an abrasion on his face?

4 **A. No.**

5 **Q.** Did you tell Detective Talt
6 that you noticed he had red marks on his
7 body?

8 **A. No.**

9 **Q.** Did you tell any supervisor at
10 headquarters that Mr. Lazo had red marks
11 on his body?

12 **A. No.**

13 **Q.** Did anyone direct you to --
14 MR. GERMANO: Withdrawn.

15 **Q.** Where did you go after you
16 left the interview room?

17 **A. I returned to my vehicle, got**
18 my gun first, got in my car, and drove to
19 Southside.

20 **Q.** Did anyone direct you to go to
21 Southside?

22 **A. No.**

23 **Q.** How did you know to go to
24 Southside?
25

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Link

1 **A. Because Officer Judge was in**
2 the hospital and I was going to check on
3 him.

4 **Q.** How did you know Officer Judge
5 was in the hospital?

6 **A. I believe I heard them talking**
7 about it.

8 **Q.** When you heard them talking
9 about it, where were you?

10 **A. Probably right before I left,**
11 maybe. I am not sure.

12 **Q.** Did you see -- before you left
13 where?

14 **A. The scene.**

15 **Q.** Did you have any radio or
16 telephone contact with either Officer
17 Judge, Detective Talt, Sergeant Newton
18 or --

19 **A. No, I did not have any cell**
20 phone contact with them. I don't have
21 their numbers so.

22 **Q.** Let me just finish the
23 question because I misspoke.
24 Sergeant Scimone, or Detective
25

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Link

1 Newton?

2 **A. No.**

3 **Q.** Approximately, what time did
4 you leave to go to Southside?

5 **A. I don't know the exact times.**
6 I was only in the precinct a few minutes
7 and I immediately went down there.

8 **Q.** Do you recall what time you
9 arrive at Southside?

10 **A. I am sure it probably took me**
11 four, five minutes.

12 **Q.** Do you have it documented in
13 your memo book?

14 **A. I have not looked at my memo**
15 book in years, so maybe.

16 **Q.** What did you do when you
17 arrived at Southside?

18 **A. I found Officer Judge in the**
19 ER and went to check on him.

20 **Q.** What conversation, if any, did
21 you have with Officer Judge?

22 **A. Basically asked him how he**
23 was. I don't remember what he injured. I
24 think it was his hand.
25

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Link

1
2 **Q.** Did you have any conversation
3 about Kenny Lazo at the hospital with
4 Officer Judge?

5 **A. No.**

6 **Q.** Did Officer Judge tell you
7 that he hit Mr. Lazo with a flashlight?

8 **A. No.**

9 **Q.** Did Officer Judge tell you
10 that someone else hit Kenny Lazo with a
11 flashlight?

12 **A. No.**

13 **Q.** Did you ask about the struggle
14 while you were with Officer Judge in the
15 hospital?

16 **A. He just described it as a very**
17 intense struggle with the three of them
18 trying to control him and keep him out of
19 the roadway and get the handcuffs on him.
20 Nothing specific. Nothing specific about
21 any force being used.

22 **Q.** How long did you remain at
23 Southside for?

24 **A. I was there for a while, maybe**
25 an hour.

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Link

1
2 **Q.** Did you have any contact with
3 any other officer at Southside, other than
4 Officer Judge?

5 **A. Not that I recall.**

6 **Q.** After an hour, what did you do?

7 **A. Well, it was at Southside when**
8 I became aware of what happened at the
9 precinct and I heard when they brought Mr.
10 Lazo in. I had no idea any of that was
11 going on.

12 **Q.** How did you learn what was
13 going on at the precinct?

14 **A. I was told that they brought**
15 in an unresponsive prisoner from the
16 precinct into the ER and then I was
17 informed that it was Mr. Lazo.

18 **Q.** Did you see Mr. Lazo being
19 brought into the ER?

20 **A. I think he was already in the**
21 trauma room by the time I got over there.

22 **Q.** Were you not in the ER room at
23 that time?

24 **A. Yes.**

25 **Q.** You were?

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Link

1
2 **A. But you can't see the trauma**
3 room from every point in the emergency
4 room.

5 **Q.** Did you see Mr. Lazo being
6 brought through the ER into the trauma
7 room?

8 **A. No, I was not near the entrance.**

9 **Q.** Did you go to the trauma room?

10 **A. I might have went to the area**
11 near it, but I can't get into it.

12 **Q.** Did you have any conversations
13 with anybody?

14 **A. No, I don't remember any.**

15 **Q.** Were you surprised to learn
16 that it was Mr. Lazo that was brought to
17 the trauma room?

18 MR. DUNNE: Objection to
19 the form, but go ahead and
20 answer it.

21 **A. Yes, I was.**

22 **Q.** How long did you remain
23 outside of the trauma room for?

24 **A. Just for a few minutes then I**
25 got out of the way. It was kind of hectic

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Link

1 over there.

2 **Q.** Did you see any other officers
3 around?

4 **A. No.**

5 **Q.** What did you do next?

6 **A. Went back over to Officer Judge.**

7 **Q.** Did you tell Officer Judge who
8 was brought to the trauma room?

9 **A. I believe so or somebody made**
10 him aware of it and he was the one who
11 told me. I am not sure how.

12 **Q.** What did you do next?

13 **A. We eventually left and went**
14 back to the precinct.

15 **Q.** Did you notice if homicide
16 arrived?

17 **A. First time I noticed homicide**
18 was when I was sitting in the precinct.

19 **Q.** What time did you arrive at
20 the precinct after Southside?

21 **A. I am not sure. I would have**
22 to check the CAD stamps on my radio.

23 **Q.** Your shift, your tour ended
24 11:00 o'clock that night?
25

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Link

1

A. Yes.

2

Q. That was the scheduled ending, correct?

3

A. Yes.

5

Q. Would you say you arrived before 11:00?

6

A. Yes, I believe so.

7

Q. When you say you were sitting in the precinct, when you first noticed homicide, what were you doing?

8

A. Waiting to see what forms needed to be filled out.

10

Q. Had you filled out any paperwork up until that point?

11

A. No.

12

Q. How long were you waiting for?

13

A. I don't remember. A while.

14

Q. More than a half an hour?

15

A. Yes.

16

Q. More than an hour?

17

A. Probably.

18

Q. More than an hour and a half?

19

A. I doubt it, but maybe.

20

Q. Who instructed you to fill out

21

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Link

1

a form?

2

A. I think the first homicide person I talked to might have been Detective Sergeant Fandry. I told him what my limited involvement was and then he asked me to do a sup.

3

Q. Did you give an accurate report to Detective Sergeant Fandry?

4

A. Yes.

5

Q. How long did you speak to Detective Sergeant Fandry?

6

A. It only took me about five or ten minutes to tell my side of it, so not that long.

7

Q. But it was an accurate representation of what your involvement was, correct?

8

A. Yes.

9

Q. After you spoke to Detective Sergeant Fandry, what did you do next?

10

A. Waited around the precinct until everything was over.

11

Q. Did you fill out the supplementary report at that point in

12

13

14

15

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Link

1

else who was waiting to speak to homicide. We were all sitting in the same office.

2

Q. Did you have any conversations with Judge while you were in the crime control office?

3

A. I am sure we were talking but not specifically about this.

4

Q. Did Officer Judge review what you wrote?

5

A. No.

6

Q. Did you review what Officer Judge wrote in his sup report?

7

A. I probably read it. I would not consider it reviewing, but yes.

8

Q. For what reason did you read Officer Judge's report?

9

A. He asked me to.

10

Q. Did he ask to read yours?

11

A. Not specifically that I know of.

12

Q. Did you let him read yours?

13

A. Yes.

14

Q. Did the sup report get signed off on by a supervisor?

15

A. Yes, they have to be.

16

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Link

1 Q. Who signed off on yours?

2 A. **I am not sure. Either -- I**
3 would have to guess, if I did, it would be
4 either Fandry or Koerber.

5 MR. GERMANO: Mark this
6 as Exhibit 4.

7 (Document was marked as
8 Plaintiff's Exhibit 4 for
9 identification, as of this
10 date.)

11 Q. Sir, I am placing before you
12 what has been marked as Plaintiff's
13 Exhibit 4. Take a moment and read that
14 document.

15 A. **(Witness complying).**

16 Q. Do you recognize the document?

17 A. **Yes.**

18 Q. What do you recognize it to be?

19 A. **My supplementary report.**

20 Q. Is that your signature on the
21 bottom left-hand side?

22 A. **Yes.**

23 Q. What was the date of this report?

24 A. **April 12, 2008.**
25

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Link

1 Q. It says date and occurrence,
2 is there a time there?

3 A. **20:29.**

4 Q. What time does that represent,
5 is that the time you filled out the report
6 or something else?

7 A. **That is about the time I got**
8 involved.

9 Q. On the bottom right-hand side,
10 is there a supervisor's signature there?

11 A. **No.**

12 Q. Is this the copy of the
13 supplementary report that you are familiar
14 with?

15 A. **Yes.**

16 Q. Do you know if a supervisor
17 signed off on this document?

18 A. **Not my responsibility, so no.**

19 Q. What supervisor did you hand
20 this document to?

21 A. **I believe it was the homicide**
22 guys so either Portella or Fandry.

23 Q. After you spoke to the
24 homicide guys Portella or Fandry on April
25

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Link

1 12, 2008 or in the early morning of
2 April 13, 2008, did you meet with homicide
3 at any other time?

4 A. **I don't think so.**

5 Q. Were you ever contacted by
6 Internal Affairs?

7 A. **Yes.**

8 Q. When were you contacted by
9 Internal Affairs?

10 A. **Shortly thereafter, when a**
11 notice of claim was filed probably.

12 Q. Who contacted you from
13 Internal Affairs?

14 A. **I believe Captain Capalino.**

15 Q. In terms of time, was that a
16 month after the incident?

17 A. **I don't recall.**

18 Q. Do you recall if it was before
19 the summer?

20 A. **No.**

21 Q. Do you recall if it was before
22 the grand jury?

23 A. **Yes, because I believe the**
24 grand jury was in the fall. So it was
25

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Link

1 before the grand jury, from what I
2 remember.

3 Q. How did Captain Capalino
4 contact you?

5 A. **He sent me a message**
6 requesting a 42 with detailed questions.

7 Q. Did you speak to Capalino?

8 A. **I don't remember speaking to**
9 him personally.

10 Q. At any time, did you have any
11 conversation with Capalino about your
12 internal correspondence or the
13 circumstances from April 12, 2008?

14 A. **No conversations. I think it**
15 was just on the internal correspondence.
16 That was it.

17 Q. When he sent you a message was
18 that a letter or an e-mail or something
19 else?

20 A. **A letter, internal correspondence**

21 Q. When did you complete the
22 internal correspondence?

23 A. **Within days of getting his**
24 request.
25

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Link

1
2 **Q.** Is it your testimony that you
3 completed the internal correspondence
before the grand jury?

4 **A. I thought I did. I am not sure.**

5 **Q.** Were you ever contacted by
6 anyone from the district attorney's office?

7 **A. Mr. Collins.**

8 **Q.** Who is Mr. Collins?

9 **A. Prosecutor.**

10 **Q.** When did he contact you?

11 **A. Shortly before the grand jury.**

12 **Q.** How did he contact you?

13 **A. I got a notification to call**
14 him or see him.

15 **Q.** Do you recall when it was?

16 **A. I don't know.**

17 **Q.** Was it in the summer?

18 **A. I don't know.**

19 **Q.** Was it a week before the grand
20 jury or more?

21 **A. I don't know.**

22 **Q.** How many times did you meet
23 with Mr. Collins?

24 **A. Just once.**

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Link

1 **Q.** In total?

2 **A. Yes. He just asked me what**
3 happened and told me I would be a witness
4 or whatever, whatever it was.

5 **Q.** Was anyone else present when
6 you met with Mr. Collins?

7 **A. No.**

8 **Q.** Did you ever speak with
9 Mr. Collins on the telephone?

10 **A. No.**

11 **Q.** Did you ever supply Mr.
12 Collins with any documents or evidence?

13 **A. He had the copies of that already.**

14 **Q.** Did you personally provide him
15 with anything?

16 **A. No.**

17 **Q.** How long did you meet with him
18 for?

19 **A. Probably about half an hour.**

20 **Q.** Was it a question and answer
21 session, similar to this?

22 **A. No. It's just basically, what**
23 happened. He asked questions about what I
24 had said that I cleared up. I guess he

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Link

1 didn't understand what I was saying and
2 that was it.

3 **Q.** What did you clear up for him?

4 **A. Whatever he didn't understand.**
5 I don't remember. I narratively laid out
6 what happened and that was it.

7 **Q.** Did he prepare you before --
8 MR. GERMANO: Withdrawn.

9 **Q.** You were a witness for the
10 grand jury, right?

11 **A. I was a witness.**

12 **Q.** Did Mr. Collins prepare you
13 for the grand jury?

14 **A. No.**

15 **Q.** Did anybody talk to you about
16 testifying before the grand jury?

17 **A. No.**

18 **Q.** Did you receive a notice of
19 something in -- how did you know that you
20 were going to --

21 **A. We get a court notification.**

22 **Q.** How long were you at the
23 courthouse for?

24 **A. I was there a while, just**
25

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1 waiting around and I think I finally went
2 on in the afternoon. I was not on that
3 long.

4 **Q.** Did you see any other of your
5 colleagues there?

6 **A. I might have saw Detective**
7 Talt. That was it.

8 **Q.** Did you speak to Detective
9 Talt about the grand jury process?

10 **A. No.**

11 **Q.** Do you know if Detective Talt
12 gave testimony?

13 **A. I believe he was on before me.**

14 **Q.** Did you talk to him about the
15 testimony he gave?

16 **A. No.**

17 **Q.** Did you ask him?

18 **A. No.**

19 **Q.** Did he volunteer to you?

20 **A. No.**

21 **Q.** Did you see Mr. Collins that
22 morning?

23 **A. In the grand jury room.**

24 **Q.** The first time you saw Mr.

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Collins from the time you met him for a half an hour, until that day, was in the grand jury room?

A. Yes, when they called me in.

Q. How long were you before the grand jury?

A. Maybe five minutes.

Q. Did Mr. Collins ask you questions?

A. He asked me to say what happened during my involvement. I did. I believe there might have been one question from the grand jury about, I don't remember what, and that was the end of it.

Q. Mr. Collins told you to give another narrative?

A. Yes.

Q. Did he ask you any questions?

A. Not that I recall. I have to look at the transcript.

Q. Did he present any documents?

A. I used a photograph to indicate on the parkway where we were and I believe maybe pictures of the earrings. That was about it.

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Q. How many pictures do you recall seeing of the earrings?

A. Just the one he had.

Q. How did it come about that you were asked to discuss the earrings?

A. Because I stated that I removed one of the earrings.

Q. Did Mr. Collins question you about that?

A. No. I don't know. It was brief. I don't remember. It was very quick. I gave a narrative. Someone from the gallery asked something, and it was something to do with the earring. That was it.

Q. Who presented the photograph?

A. I believe he did. I didn't have it.

Q. During your narrative in the grand jury, were you asked if you saw any abrasions or marks on Mr. Lazo?

A. Not that I remember.

Q. Do you recall, in the grand jury, if you testified that you saw marks

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and abrasions on Mr. Lazo's body?

A. Not that I remember.

Q. After the grand jury, did you have any further communications with the District Attorney's office?

A. No.

Q. After the grand jury, did you have any further communications with Internal Affairs?

A. No.

Q. After the grand jury, did you have any further communications with homicide?

A. No.

Q. When you were driving Mr. Lazo, when you were transporting Mr. Lazo, and when you walked him through the precinct through the detective squad room, did you notice Mr. Lazo's breathing style, pattern?

A. No.

Q. Did you, at any point in time, check Mr. Lazo's pulse?

A. I assume since he was walking

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he had one, so I didn't feel the need to.

MR. GERMANO: I have no

further questions.

EXAMINATION BY

MR. DUNNE:

Q. Officer Link, at any point in time during your entire contact with Mr. Lazo, from the road side until you left him at the precinct, did he ever ask you for medical attention?

A. No.

MR. DUNNE: Thank you.
(Time Noted: 2:36 p.m.)

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Link

ACKNOWLEDGMENT

STATE OF NEW YORK)

:ss

COUNTY OF)

I, JOSEPH A. LINK, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of May 19, 2011; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

JOSEPH A. LINK

Signed and subscribed to before me, this day of , 2011.

Notary Public, State of New York

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CERTIFICATE

STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

I, JUDY GROB, a Notary Public within and for the State of New York, do hereby certify:

That JOSEPH A. LINK, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of June, 2011.

JUDY GROB

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